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Colombia's Armed Conflict and its Refugees: International Legal Protection *versus* Interregional State Interests

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ABSTRACT. **Objective/context.** This article analyzes the international protection afforded to Colombian refugees in neighboring countries, with a particular emphasis on Panama, Venezuela and Ecuador. It examines the political and security interests of these states as regards their legal recognition of these cross-border migratory flows in light of their international obligations under the 1951 Geneva Convention. It then considers how the various protection labels conferred on refugees contribute to the formation of their identities. Finally, it seeks to question and challenge the evolution of UNHCR's role and responsibilities in protecting these migrants under its 1950 mandate. **Methodology.** This empirical case study is based on a qualitative review of the literature pertaining to migratory flows induced by the armed conflict, including official reports published by UN agencies as well as international and Colombian non-governmental organizations (NGOs). **Conclusions.** The complex dynamics underlying the interregional political and security interests of Colombia's neighbors have led them to afford limited or no international protection status to the forced migrants. **Originality.** The relevance of this study is highlighted by the ongoing failure in identifying a durable solution to the protracted situation of Colombian refugees displaced throughout neighboring countries.

KEYWORDS: Colombia; Armed Conflict; Refugees; Panama; Venezuela; Ecuador; International Protection.

El conflicto armado colombiano y sus refugiados: protección legal internacional *versus* intereses estatales interregionales

RESUMEN. **Objetivo/contexto:** Este artículo analiza la protección internacional otorgada a los refugiados colombianos en los países vecinos, con un enfoque particular en Panamá, Venezuela y Ecuador. Se examinan sus intereses políticos y de seguridad en su proceso de reconocimiento legal de dichos flujos migratorios interestatales considerando sus obligaciones internacionales según la Convención de Ginebra

de 1951. Posteriormente, se explora el impacto de distintas etiquetas de protección otorgadas a los refugiados en la formación de sus identidades. Finalmente, se intenta cuestionar y desafiar la evolución del papel y de las responsabilidades del ACNUR bajo su mandato de 1950 en proteger dichos migrantes. **Metodología:** Este caso de estudio empírico está basado en una revista cualitativa de la literatura sobre los flujos migratorios a raíz del conflicto armado, incluso informes oficiales publicados por agencias de la ONU y por ONG internacionales y colombianas. **Conclusiones:** Las dinámicas complejas que sustentan los intereses interregionales políticos y de seguridad de los vecinos de Colombia llevaron a un reconocimiento legal limitado o ausente de los migrantes forzados. **Originalidad:** El texto aporta elementos para suplir el vacío que se encuentra en los estudios sobre la incapacidad en encontrar soluciones duraderas en brindar protección a los refugiados colombianos desplazados en los países vecinos.

PALABRAS CLAVE: Colombia; conflicto armado; refugiados; Panamá; Venezuela; Ecuador; protección internacional.

Conflito armado na Colômbia e seus refugiados: proteção legal Internacional *versus* interesses inter-regionais do Estado

RESUMO: **Objetivo/contexto**: este artigo analisa a proteção internacional outorgada aos refugiados colombianos nos países vizinhos, com particular ênfase no Panamá, na Venezuela e no Equador. Examinam-se os interesses políticos e de segurança desses estados com respeito ao reconhecimento legal dos fluxos migratórios fronteiriços à luz de suas obrigações internacionais conforme a convenção de Ginebra de 1951. Em seguida, considera-se como as várias etiquetas de proteção outorgadas aos refugiados contribuem para a formação de suas identidades. Finalmente, busca-se questionar e desafiar a evolução do papel e das responsabilidades do Alto Comissariado das Nações Unidas para Refugiados em proteger esses migrantes sob o mandato de 1950. **Metodologia**: este estudo de caso empírico tem base na revisão qualitativa da literatura sobre os fluxos migratórios induzidos pelo conflito armado, incluindo relatórios oficiais publicados pelas agências da Organização das Nações Unidas bem como por organizações não governamentais colombianas e internacionais. **Conclusões**: as complexas dinâmicas que sustentam os interesses inter-regionais políticos e de segurança nos países vizinhos da Colômbia levaram a um status de proteção internacional limitado ou ausente para os migrantes forçados. **Originalidade**: a relevância deste estudo é destacada pela atual falta de identificação de uma solução duradoura para a prolongada situação dos refugiados colombianos desalojados nos países vizinhos.

PALAVRAS-CHAVE: Colômbia; conflito armado; refugiados; Panamá; Venezuela; Equador; proteção internacional.

Introduction

Although Colombia officially ended its 52-year-old conflict with the FARC (Fuerzas Armadas Revolucionarias de Colombia) guerrilla group when it signed the Havana Peace Agreement in 2016, armed hostilities continue to this day, both with FARC dissidents and other armed groups, making the overall conflict the longest in the history of the 20th and early 21st centuries. Since the 1948 assassination of populist political leader Jorge Eliécer Gaitán, the country has been plagued by hostilities that gradually pulled in government forces, the left-wing insurgency and right-wing paramilitary groups. In the 1990s, the conflict grew rapidly in both intensity and geographical scope and quickly engulfed the entire country. By the mid-90s, as a result of the state of generalized violence, the conflict began to affect neighboring countries. Unprecedented flows of refugees began fleeing the country, seeking protection in neighboring Ecuador, Panama, Venezuela, Peru and Brazil. These ongoing migratory flows were triggered by widespread violations of international humanitarian and human rights law by all parties involved in the conflict. The latest official figures provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) state that in late 2017, there were 224,106 Colombian registered refugees, asylum-seekers and undocumented displacees considered to be in 'refugee-like' situations throughout the Americas, the vast majority of them in Ecuador, Venezuela and Panama (UNHCR 2017a, 70). However, the former UNHCR Representative in Colombia notes that, in these three countries alone, the overall figure could be as high as 1 million individuals who were forced to flee and to seek international protection due to a well-founded fear of persecution (Gottwald 2004, 517).

In reaction to these population movements across their borders, Colombia's neighbors sought to depict the conflict as primarily internal and actively downplayed the escalating cross-border refugee flows. They engaged in deterrent measures to prevent illegal cross-border movement, such as border military operations, non-admission policies for refugees and systematic deportation of illegal migrants (Gottwald 2004, 517). These practices can be seen as a fundamental infringement of the provisions of the 1951 United Nations Convention Relating to the Status of Refugees, the 1969 American Convention on Human Rights and the 1984 Cartagena Declaration on Refugees.

This article hypothesizes that the complex dynamics of the interregional political and security interests of Colombia's neighbors have led them to afford limited or nonexistent international protection status to Colombian refugees. The relevance of this study is accentuated by the fact that these countries have hitherto mostly failed to identify a lasting solution to the protracted situation of the Colombian refugees dispersed throughout their territories.

This analysis is divided into three sections. First, we discuss the political and security interests of Colombia's five neighbor states as regards the spillover effects of the armed conflict. Second, we consider and evaluate the impact and evolution of the concept of labelling forced migrants, given that these labels cause them to be either granted or denied legal protection status. Third, we examine the evolution of UNHCR's international role and responsibilities in the context of these refugee outflows through its successive international protection policy initiatives. The article concludes with some final remarks.

1. The spillover effects of the armed conflict: political and security interests of Colombia's regional neighbors

The governments of Colombia's neighboring countries have followed a distinct pattern, downplaying the scope of Colombian refugee inflows and showing reluctance to grant protection in line with their international obligations. Haddad argues that refugees are a product of states that fail to protect their own citizens within their jurisdictions, and that they are consequently perceived as an anomaly in the established state-citizen-territory paradigm of the international system of states. In other words, unrecognized refugees are seen as individuals floating between states without a formal legal bond to one of them. Such an anomaly is seen as a source of instability, and thus a security risk that threatens to destabilize the state system (Haddad 2008, 90). The main risk can be identified as a questioning of the legitimacy of a state-centric international society where individuals are understood to be legally under the responsibility of their respective states, as opposed to being independent elements, equal or even superior to states. This concern over the primordial role of states lies, from a communitarian security perspective, at the core of the international refugee regime itself—a regime designed to reallocate these floating individuals to a specific state. However, political and domestic security concerns over admitting masses of refugee flows, such as the Colombian displacees, have led Colombia's neighbor states to deny formal refugee status to them (91-92).[1] Granting refugee status to these displacees is perceived as a security threat to the institutions, welfare system and resources of the receiving societies, as well as a political liability for the policymakers who would grant such recognition (92). This chapter will seek to identify a pattern of political and security concerns that have led Colombia's neighbor states to either grant

1 The author distinguishes between communitarian security issues and cosmopolitan humanitarian concerns in the creation of international regimes by the state system. She argues that the international refugee regime was born from the former, as opposed to the human rights regime, which emerged from the latter.

limited international protection to Colombian refugees or downright deny them protection. We will start with the three countries that receive the largest number of these refugees, namely Panama, Venezuela and Ecuador, before considering the remaining two, Brazil and Peru.

a. Colombian borders most affected by refugee outflows

a.i) Panama

The first outflows of Colombian refugees into Panamanian territory occurred in 1996, when individuals fleeing the violence crossed the border from Chocó Department into Panama's Darién and San Blas border provinces (HRW 1998). The government of Panama responded by stating that these groups were made up of irregular migrants who could not be freely admitted into the national territory due to security concerns and that Panama should not be regarded as the solution for Colombia's displacees (Gottwald 2004, 530). The national authorities of both countries subsequently proceeded to forcibly return these refugees to Colombia, without consulting UNHCR or any other humanitarian agency (CODHES 2000). UNHCR formally protested this action in 1997, stating that the Panamanian government's actions violated the principle of non-refoulement enshrined in Article 33 of the 1951 Convention, as well as Article 22 (8) of the American Convention on Human Rights (USCRI 1999).

Despite the Panamanian government's subsequent efforts to transpose its international obligations regarding refugee law into its own national legislation, first through the 1998 *Decreto Ejecutivo 23,* and more recently through the *Decreto Ejecutivo 5* of January 16, 2018, Panama continues to be characterized by a restrictive protection environment, a broken asylum system, and a lack of durable solutions for Colombian displacees who find themselves in its territory (Refugee Council USA 2013, 1).[2] In a report released in 2011 by Refugee Council USA, the asylum system was found to be so flawed that it deterred refugees from seeking protection (Refugee Council USA 2011, 3). Moreover, "many organizations currently encourage vulnerable Colombians not to apply for asylum, as the chances of being detained or forcibly repatriated to Colombia instead of receiving status are so high" (Refugee Council USA 2013, 1). Encouragingly, on December 13, 2011, the Panamanian government passed *Ley 81*, which aimed to grant asylum to 863 Colombian refugees in Panamanian territory who had previously received Temporary Humanitarian Protection (THP).[3] The law

2 Panama: *Decreto Ejecutivo Nº 23 de 10 de febrero de 1998.* https://www.refworld.org/docid/3e535d114.html; Panama: *Decreto Ejecutivo Nº 5 de 16 de enero de 2018.* https://www.refworld.org/country,LEGAL,,,PAN,,5a7c51514,0.html

3 Panama: *Ley Nº 81 de 13 de diciembre de 2011.* http://www.gacetaoficial.gob.pa/pdfTemp/26932/GacetaNo_26932_20111215.pdf

provided for regularization to be implemented within a two-year window, but it was ultimately implemented on March 18, 2014, when 414 Colombians with THP status were granted permanent residency and indefinite working permits (Portafolio 2014). However, it has recently become more complicated not only to obtain international protection in Panama but also to merely transit through its territory. Up until 2018, Panama allowed undocumented migrants to remain in the country for a maximum of 30 days. This usually enabled Colombian migrants to cross its southern border and continue their northward journey towards the US or Canada. However, owing to pressure from both Costa Rica and the US, the administration of current President Juan Carlos Varela has agreed to enhanced border controls in order to curb migration without valid visas (Iglesias and Pentón 2017).

According to the latest official UNHCR figures, there are 17,099 Colombian refugees, asylum-seekers and refugee-like individuals in Panama, of whom 13,933 lack any form of international legal protection (UNHCR 2017b; 2019a). As these figures show, aside from a handful of fortunate applicants, the Panamanian authorities are unwilling to grant permanent protection to Colombian displacees who have crossed the border, in clear violation of the norms set out in international refugee law. One of the likely reasons is that, in the context of unprecedented refugee flows from a much larger neighbor, the government of Panama fears for the stability of its small nation and in particular for the security of its institutions, welfare system and resources. In addition, the two countries share a complicated historical relationship, which dates back to the independence of Panama from Colombia in 1903. Hence, the Panamanian government is probably reluctant to grant international protection to Colombian citizens on a large-scale basis, since this would imply not only acknowledging but also highlighting the humanitarian and human rights violations occurring in its neighbor's territory, thus damaging the improving relations between the two governments. Having considered Panama's political and security concerns regarding these significant refugee flows, this study will now turn to Colombia's other neighbors in order to determine whether a similar pattern can be identified within their respective governments.

a.ii) Venezuela

The first refugee outflows from Colombia to Venezuela occurred in May 1999, when 4,000 individuals fled combat between paramilitary forces and the insurgency in the department of North Santander (Gottwald 2004, 530). In response, the Venezuelan authorities implemented an ad hoc procedure to provide temporary humanitarian assistance to the displacees before deporting them back across the border with the assistance of Colombian civil and military forces, again without the involvement of UNHCR or any other humanitarian agency (USCRI 2000). The bilateral meetings held between the two countries resulted in the categorization of all migrants who

had crossed the border as *internally displaced in transit* (Gottwald 2004, 530). Such terminology explicitly described these migratory flows as non-international in nature, therefore justifying the denial of refugee status according to international refugee law. In other words, the migrants were still officially considered IDPs, even though they had physically left Colombian territory. Haddad argues that since refugees are perceived as a threat to the international state system as well as the institutions and resources of the receiving state, labelling the displacees as IDPs meant that they were officially only a domestic concern of their home state, and thus had to be sent back across the border as soon as possible (Haddad 2008, 93).

In 2001, Venezuela passed its first asylum legislation, the so-called *Ley Orgánica sobre Refugiados o Refugiadas y Asilados o Asiladas (LORRAA)*, followed by its implementing mechanism in 2003.[4] This statute officially transposed the country's international obligations regarding refugee law into its domestic law. Over the following decade, Venezuela slowly began to acknowledge the humanitarian dimension of its neighbor's armed conflict, providing asylum to over 3,000 Colombian displacees. However, by 2012, the number of Colombian protracted refugees in Venezuela stood at over 200,000, highlighting the failures of its refugee status determination (RSD) procedures and the lack of political will to recognize the dimensions of the humanitarian crisis (Kennedy 2012).

In order to understand this situation, one can point to the fluctuating diplomatic relationship between the two countries, which has a direct impact on migratory flows and protection concerns. In 2009, ideological tensions between former president Álvaro Uribe and former president Hugo Chávez—tensions triggered by the Colombian government's acceptance of the establishment of US military bases in its territory—caused the border zones lining the two countries to become heavily militarized and made crossing extremely complicated. Over the next few years, formal relations improved, in part due to former president Juan Manuel Santos' more successful bilateral collaboration with President Chávez. In early 2012, the Venezuelan government decreed that all Colombians could freely enter the country without a visa (Kennedy 2012). Following Chávez's death in March 2013, his successor Nicolás Maduro sustained a close working relationship with his counterpart in Bogotá. A bilateral summit was held in Cartagena on August 1, 2014, where Maduro gave his full support for the ongoing peace process with the FARC in Havana and committed to jointly fighting the illegal drug trade and establishing a common border control center (BBC 2014).

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4 Venezuela: *Ley Orgánica sobre Refugiados o Refugiadas y Asilados o Asiladas*. 3 September 2001. http://www.refworld.org/docid/3dbeb6934.html; Venezuela: *Reglamento de la Ley Orgánica sobre Refugiados o Refugiadas y Asilados o Asiladas*, Decreto Nº 2.491, 4 July 2003. http://www.refworld.org/docid/3f54c68e4.html

In addition, Venezuela participated in the UNHCR Ministerial Intergovernmental Event on Refugees in December 2011, where it made three pledges relating to ameliorating its policies towards Colombian refugees in its territory. The first pledge was to improve its extremely time-consuming and bureaucratic RSD procedure by facilitating the delivery of refugee cards in the main cities along the border. The second pledge was that appropriate public policy would be implemented in all areas necessary to address the situation. This in turn led to 25 ministries coordinating their efforts and identifying avenues through which each could effectively contribute to creating a government-wide strategy. The third pledge was to organize a regional conference in order to identify and address the needs of vulnerable refugees, such as women and youth (UNHCR 2011b, 131-132).

However, the outbreak in 2010 of the ongoing Venezuelan Crisis gradually dismantled these promising efforts, as the nascent asylum system broke down along with the entire civil administration. By the end of 2018, about 4 million Venezuelans—more than 10% of the population—had fled the country. According to UNHCR, by September 2018 some 250,000 Colombian refugees had crossed the border back into their home country (UNHCR 2018, 1). While the situation on the ground makes it difficult to know how many Colombian refugees, asylum-seekers and refugee-like individuals remain in Venezuela, mostly in remote border areas and Caracas, the latest official UNHCR figures identify at least 174,577 individuals, 50,996 of whom remain deprived of any form of international legal protection (UNHCR 2017b; 2019a).

The fluctuating diplomatic relationship between the two neighbors (which reached an all-time low on January 23, 2019, when current Colombian president Iván Duque recognized Juan Guaidó as the legitimate president of Venezuela over Nicolás Maduro), combined with the ongoing Venezuelan crisis and the collapse of its civil administration, sheds light on the political dynamics of recognizing a large influx of refugees. Panama and Venezuela thus share a pattern of granting limited or no international protection to Colombian displacees. We will now turn to the case of Ecuador, which took a different path towards upholding its obligations under international refugee law in the context of Colombia's armed conflict.

a.iii) Ecuador

Compared with Panama and Venezuela, the Ecuadorian authorities have been relatively diligent in upholding the international refugee law instruments to which they are a party. For instance, in the second half of 2000, an estimated 9,000 Colombians fled violent clashes between paramilitary forces and insurgent groups in the department of Putumayo. While some 7,000 willingly reentered Colombia through another border department, the government of Ecuador recognized the remaining refugees who chose to seek protection across the border on a *prima facie*

basis under the Cartagena Declaration. UNHCR was granted access to all refugees and registered and assisted them with the close collaboration of the Ecuadorian authorities (Gottwald 2004, 531).

According to the UNHCR Submission for Ecuador's Universal Periodic Review (UPR) in 2011, the recognition rate for asylum claims peaked between March 2009 and March 2010. During this period, Ecuadorian authorities worked with UNHCR, NGOs and refugee groups to conduct enhanced registration of those undocumented Colombians who were on Ecuadorian soil fleeing the armed conflict (UNHCR 2011a, 1). This streamlined mechanism was termed the *Registro Ampliado*. The Ecuadorian government and UNHCR designed an operations manual which led to the registration of nearly 28,909 Colombians of whom 27,740 were recognized as refugees (Reed-Hurtado 2013, 29). However, recognition rates have since steadily decreased, from 74% in 2009 to 53% in 2010 and to 24% in 2011 (UNHCR 2011a, 1). Refugee Council USA has reported that a new admissibility step in the Ecuadorian RSD procedure, introduced in January 2011, aims to filter out "manifestly unfounded, abusive, or illegitimate" claims (Refugee Council USA 2013, 2).

As the fighting in Colombia intensified, so did the spillover effects and refugee outflows into northern Ecuador. Not only has this increased the risk for refugees, who may be pursued across the border by irregular armed actors, it has also made distinguishing between victims fleeing the conflict and their persecutors more difficult (Refugee Council USA 2013, 2). As a result, UNHCR and its field partners have reported that the detention of refugees by Ecuadorian authorities along the border in provisional detention centers and migration check points has increased since 2011, despite the fact that the Ecuadorian Constitution explicitly offers protections against this practice under its Article 41: "No se aplicará a las personas solicitantes de asilo o refugio sanciones penales por el hecho de su ingreso o de su permanencia en situación de irregularidad".[5] This constitutional norm reflects the content of Article 31 (1) of the Geneva Convention. The above-mentioned practices demonstrate that Ecuador's domestic security concerns over the spillover effects of the Colombian conflict and the incursion of irregular armed actors into its territory have led it to violate both its own constitutional norms and its international obligations with respect to the protection of newly-arrived Colombian refugees.

The adoption in May 2012 of *Decreto Presidencial 1182* introduced some significant changes to the RSD process, such as creating a provisional document for asylum-seekers to enable them to seek work, extending the validity of

5 Ecuador: Constitution, Article 41, 20 October 2008. http://educacion.gob.ec/wp-content/uploads/downloads/2012/08/Constitucion.pdf

refugee documents to two years and providing better access to naturalization.[6] Additionally, a fast-track RSD procedure for vulnerable individuals was put into place. However, the newly-enacted legislation signaled a move away from the Cartagena Declaration's extended refugee definition. Given the specific nature of the Colombian armed conflict, many refugees fleeing generalized violence or targeted by non-state actors now find themselves excluded from the Ecuadorian protection regime. Moreover, the decree stipulates that asylum seekers only have 15 days to request asylum after crossing into Ecuador, and a maximum of five days to lodge an appeal if the request is denied. As for those who are deemed ineligible during the initial admissibility process, they are only given three business days to appeal. Since it takes an average of three business days to receive one's file from the Refugee Directorate, the deadline set out in the law virtually thwarts any successful appeal (Refugee Council USA 2013, 2-3). As such, the modifications to Ecuador's refugee protection framework were indicative of its political and domestic security landscape, which included debates among policy-makers about the legal implications of a strict application of the Cartagena definition, concerns expressed by the Ecuadorian security forces over ever-increasing refugee flows, pacts between political parties before the 2013 general elections, and changing dynamics in regional politics, such as the close partnership between former president Rafael Correa and former president Santos (Reed-Hurtado 2013, 29). This positive relationship, which might now amount to a status quo, has so far been preserved between current presidents Lenín Moreno and Iván Duque, despite their ideological differences.

According to the latest official UNHCR figures, some 236,310 Colombian refugees, asylum-seekers and refugee-like individuals are currently on Ecuadorian soil, of whom 179,384 lack any form of international legal protection (UNHCR 2017b; 2019a). Approximately 418 newcomers arrive each month from the southern Colombian departments of Nariño and Putumayo (UNHCR 2017b, 1). As the country's protection regime continues to become more deterring, the willingness of the Ecuadorian authorities to overcome their political and security concerns seems increasingly questionable. It may be inferred that Ecuador, despite successful compliance with international legal standards during the *Registro Ampliado* period, is now following the same pattern as Panama and Venezuela in granting limited or no protection status to Colombian displacees, in clear violation of international obligations.

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6 Ecuador: *Decreto Nº 1182*, Registro Oficial Nº 727, 19 June 2012. https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/registro-oficial/item/5586registro-oficial-no-727.html

b. Colombia's remote borders and jungle areas: Brazil & Peru

The borders shared by Colombia and its neighbors Brazil and Peru, covering a total of 1,790 km and 1,494 km respectively, consist mainly of jungle areas with no access roads that are sparsely inhabited by small indigenous communities (CIA 2019). Owing to such natural constraints, these regions have remained on the margins of the Colombian armed conflict, with few clashes between belligerents and smaller refugee outflows compared to all other Colombian borders. The insurgency has mainly used the area for rest, recreation, training and preparation for operations against the regular army and paramilitary forces. However, the guerrilla groups have subjected some indigenous communities to forced recruitment and forced coca cultivation and obliged them to provide supplies, which has led members of these communities to flee across the border (Gottwald 2004, 531). As of 2017, UNHCR Peru reported 604 Colombian refugees as well as 376 asylum-seekers whose applications were pending (UNHCR 2019a). During the same year, UNHCR Brazil reported 1,291 Colombian refugees in addition to 1,417 asylum-seekers (UNHCR 2019a). The contrast between these figures and the amount of Colombian refugees, asylum-seekers and undocumented displacees in Panama, Venezuela and Ecuador clearly confirms that Peru and Brazil host only a marginal percentage of total refugee outflows. Accordingly, this study will not engage in a qualitative analysis of these two countries' political and security concerns.

2. From recognized refugees to illegal migrants: the impact of labelling

Having established that Colombia's neighboring states are generally reluctant to grant forced migrants adequate protection in accordance with their international obligations, we now discuss the impact that labelling can have on the formation of identity within the context of asylum policies and protection practices. The nature and impact of labelling vary substantially depending on the context: legal, non-legal, bureaucratic, political, humanitarian or individual. Legal labels are especially important in countries with developed national protection frameworks where distinct labels afford varying degrees of protection. Labels sometimes have a positive effect: they can translate into a range of rights aimed at protecting asylum seekers during RSD procedures and pending removal, as well as recipients of temporary protection and recognized refugees. On the other hand, labels can also have a negative impact in that they are often manipulated by receiving states in order to limit residence and working rights and other benefits, thus minimizing their own responsibilities (Stevens 2013, 19).

Whether labels are used to grant far-reaching legal protection or to deny most basic features of protection, some scholars argue that "because we deploy labels not

only to describe the world but also to construct it in convenient images […] labelling [is] not just a highly instrumental process, but also a powerful explanatory tool to explore the complex and often disjunctive impacts of humanitarian intervention on the lives of refugees" (Zetter 2007, 173). Indeed, forced migrants do not necessarily conform to the image or label imposed on them by the interests and procedures of NGOs, governments and intergovernmental agencies acting under the banner of humanitarianism (Zetter 1991, 41). There is a frequent mismatch between policy measures driven by specific agendas and the ways that individuals conceived as subjects of such policies are ultimately defined by artificial and incomplete images (Wood 1985, 347-373). Moreover, in addition to its highly politicized effect on access to immediate rights and services as well as to durable solutions such as resettlement, labelling also plays a major role in the shifting identities of victims forced to flee persecution (Stevens 2013, 17). Individuals' self-perception is closely linked to the labels that are imposed on them, causing a potential increase in suffering if their experienced hardship is not recognized.

Zetter's early research emphasizes the conceptual and operational limitations of the concept of refugee labelling. He identifies a number of key issues, such as the stereotyping of identities for the sake of bureaucratic labelling needs, the symbolic power of distinct hierarchical protection labels and its socio-psychological effects on the labelled, the shifting nature of human identity dynamics, the lack of effective participation of the labelled in these bureaucratic processes, and the resulting extreme legal vulnerability of forced migrants owing to the labels imposed on them (Zetter 1991, 41). His more recent findings underscore that the impact of institutional and bureaucratic labelling on the lives of refugees remains strong in a globalized era of transnational social transformations. Given this context, labelling has become politicized due to its legitimization of a mainstream political discourse of resistance to refugees and migrants, while simultaneously being portrayed as an apolitical set of bureaucratic categories. In addition, the proliferation of labels designed to clarify and distinguish distinct forms of forced migration and alleged protection needs has paradoxically blurred the impact of such labelling efforts, in the context of increasingly complex social transformations that are generating more intricate forms of persecution (Zetter 2007, 172-173 and 188).

Analyses have been undertaken of the motivations of states over the last quarter century for increasingly populating the international refugee regime with a seemingly endless list of alternative national protection labels, such as humanitarian admission, B status, temporary protected status, special leave to remain, etc. As previously established, such a pattern can be clearly traced among Colombia's neighbors. Hathaway argues that states have been misguided in two fundamental ways in creating these legal alternatives. Firstly, states are often under the impression that granting refugee status under the Geneva Convention will represent a legal

constraint on their right to define their own immigration policies (Hathaway 2003, 1-2; 1997). In other words, they see granting such status as creating a predicament because of its alleged permanent nature and the impossibility of bringing it to an end. However, Grahl-Madsen points out that the nexus between refugee status and the concept of asylum was rejected both in the 1951 Convention and at the 1977 Territorial Asylum Conference (Grahl-Madsen 1980, 8-10). In addition, Article 1C (5-6) of the Convention explicitly stipulates that refugee status entails a duty to protect only as long as a well-founded fear of persecution remains:

> This Convention shall cease to apply to any person falling under the terms of section A if:
> (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality. Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
> (6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence. Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.[7]

This means that formal recognition of refugee status does not translate into automatic recognition of indefinite asylum; states remain the final judges of whether to grant or withdraw such a legal protection label.

Secondly, the academic literature underscores that refugee status is a declaratory and not a constitutive act, which means that an individual is considered a refugee with entitlement to protection under the Convention as soon as he or she meets the relevant criteria. Hathaway goes so far as to say that, as a strict matter of international refugee law, there should not be any distinct standards of legal protection when a receiving state uses some other label to refer to a Convention refugee. In other words, even if forced migrants are not formally recognized with the refugee label, they ought to be protected by the system of incremental rights established under the Convention. This system consists of categories of Convention rights granted to refugees at different

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7 UN General Assembly, *Convention Relating to the Status of Refugees*, Article 1C (5-6), 28 July 1951. http://www.refworld.org/docid/3be01b964.html

stages: when they *enter* a state party's territory, when they are recognized as *lawfully present* within the territory, when they are recognized as *lawfully staying* there, and finally upon satisfaction of a durable residency requirement.[8] Colombian refugees granted a temporary protection label in some neighboring countries are entitled to claim the rights contingent on *lawfully staying* there. This entitlement is not determined by a formal adjudication of their refugee status or granting of permanent residence, but rather by an individual's *de facto* circumstances (Hathaway 2003, 2-5). In addition, according to Article 27 of the Vienna Convention on the Law of Treaties, "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".[9] A state cannot rely on its decision to regularly or exceptionally delay or avoid verification of refugee status, including by granting alternative labels, in order to bypass refugee rights protected under international public law. In essence, the state practice of alternative labelling can be dismissed by arguing that "if the goal of the various alternative protection labels and their accompanying temporary protection systems is to avoid the need to recognize most Convention rights, they are legally untenable. And if their goal is instead to avoid the need to grant asylum, they are legally unnecessary." (Hathaway 2003, 2-5).

Furthermore, the academic literature highlights another contentious element in labelling practices: tensions between the inclusive interpretation of the refugee label promoted by NGOs and humanitarian agencies and the exclusive interpretation defended by states. Practice has shown, in both signatory and non-signatory parties to the Geneva Convention, that inclusive access to rights or services is highly contingent on the label assigned to foreigners by states. In the absence of an efficient national human rights framework, these foreigners may find themselves threatened by exploitation, neglect and exclusion. In the case of Colombian refugees, as explained earlier, the patchwork of diverging and often limited legal protection statuses granted by bordering countries has allowed governments in these countries to limit their role in

8 The following Convention articles apply to all refugees, without qualification: 3 (non-discrimination), 12 (personal status), 13 (movable and immovable property), 16(1) (access to courts), 20 (rationing), 22 (education), 29 (fiscal charges) and 33 (prohibition of expulsion or return ["refoulement"]). Moreover, a number of rights accrue to all refugees *entering* a state party's territory: 4 (religion), 25 (administrative assistance), 27 (identity papers), 31(1) (non-penalization for illegal entry or presence) and 31(2) (unlawful movements of refugees in the country of refuge). Those *lawfully present* are protected by articles 18 (self-employment), 26 (freedom of movement) and 32 (expulsion). Finally, those *lawfully staying* are under the protection of articles 14 (artistic rights and industrial property), 15 (right of association), 17 (wage-earning employment), 19 (liberal professions), 21 (housing), 23 (public relief), 24 (labour legislation and social security) and 28 (travel documents). Exceptionally, these refugees may also claim rights under articles 7(2) (exemption from reciprocity) and 17(2) (exemption from restrictive measures imposed on aliens in the context of wage-earning employment).

9 UN, *Vienna Convention on the Law of Treaties*, 23 May 1969. http://www.refworld.org/docid/3ae6b3a10.html

meeting the humanitarian needs of the displacees. This has forced international and national NGOs as well as UNHCR to step into the vacuum. The agency of these actors has been of the utmost importance and highlights the absence of durable and effective state-sponsored legal protection, as well as a coordinated, structured and committed national and regional approach to the protection issues facing the Columbian displacees (Stevens 2013, 20). As such, this study will now turn to an analysis of the evolution of UNHCR's role and responsibilities through the establishment of international protection initiatives that are directly relevant to the issue of Colombian displacees in neighboring states.

3. The evolution of UNHCR's role and responsibilities in light of Colombia's refugee outflows

Since its creation in the aftermath of World War II, UNHCR has faced significant and recurring challenges owing to changing global political circumstances and the evolving dynamics of forced displacement worldwide (Elie 2008, 277). María Teresa Ponte Iglesias points out that the nature of refugeehood has itself undergone dramatic changes since the drafting of the 1951 Convention and UNHCR's mandate. She argues that the immense majority of contemporary refugees are not suffering persecution directly related to the five grounds identified in the Convention, but are instead fleeing the indiscriminate effects of armed conflict and other situations of violence, which may lead to the destruction of their homes, crops, food reserves and means of subsistence, as was the case in Kosovo, Sierra Leone and Chechnya. Therefore, there is a growing mismatch between current refugee flows and the official refugee definition enshrined in the Convention (Ponte Iglesias 2000, 128). Hence, in order to uphold the international refugee regime and ensure its own institutional survival, the Refugee Agency has had to expand the scope of its original mandate and has been forced into a process of constant institutional adaptation (Elie 2008, 277). Geoff Gilbert states that whereas initially, UNHCR was solely responsible for protection under its Statute and for ensuring that member states did not *refoule* persons falling within the strict definition found in the 1951 Convention, its role has now expanded to cover victims of war, victims of human rights violations, persons who have not managed to cross an international frontier and even stabilization activities in potential source countries (Gilbert 1998, 355).

As the Refugee Agency struggles to come up with durable solutions for displacees in 'refugee-like' situations, such as the Colombians who find themselves in protracted situations throughout neighboring countries, the legitimacy of its gradually expanding mandate has been called into question. Scholars have criticized its tendency to assume an ever-increasing role in protecting new categories of displaced persons and have spoken out against the idea that it should become

the UN's protection organization. They have suggested that the Agency should instead concentrate on its core refugee-specific mandate while playing a facilitating and catalytic role for other actors, such as fellow UN agencies, states or NGOs involved in broader issue-areas of mixed migration, security, development and peacebuilding (Loescher, Betts and Milner 2008, 119-125).

Moreover, it has been argued that throughout its history, the Agency has been dependent on donor states for vital funding, which has often complicated its capacity to persuade states to meet their legal and humanitarian obligations towards refugees (Elie 2008, 277). Loescher, Betts & Milner argue that "UNHCR has been situated between the constraints and challenges of states' power and interests and its own normative agenda of promoting refugee protection and access to solutions". They advise UNHCR to rethink its relationship with states beyond the donor conundrum by relying on its own moral authority to become more politically engaged and by linking national interests with actions that enhance the protection of both Convention and non-recognized refugees (Loescher, Betts and Milner 2008, 4-5 and 126-127). This chapter will be devoted to assessing the positive outcomes for Colombian refugees of the recent initiatives launched by the Refugee Agency to modernize the global refugee regime and to redefine its own role and responsibilities. It will also highlight some criticisms and shortcomings of this approach.

From 2000 onwards, UNHCR set in motion several international protection policy initiatives, such as the Global Consultations on International Protection (2000-2002), the Agenda for Protection (2001-2010), the Convention Plus Initiatives (2002-2005) and the High Commissioner's Dialogues on Protection Challenges (2007-2014). These initiatives were all aimed at triggering in-depth reflection among states, NGOs, intergovernmental organizations, the academic community and stakeholders on how best to revitalize the international refugee regime and enable states to improve their response mechanisms when facing protection challenges. The Global Consultations were launched in December 2000 on the occasion of the 50th anniversary of the 1951 Convention, which in turn led to the 2002 adoption by the Executive Committee (EXCOM) of the Agenda for Protection (UNHCR 2002, 1). Since then, this program has effectively shaped UNHCR's protection efforts, as well as those of states and partners (UNHCR 2002; 2010a, 2-5). The Agenda's impacts on the protection challenges faced by Colombian refugees can be outlined as follows: It recommended that refugee protection be enhanced by accession to, and effective implementation of, regional refugee instruments, such as the Cartagena Declaration in the case of Colombian refugees. It improved UNHCR's registration systems and guidance through the publication of the *UNHCR Handbook on Registration* (2003) and the *Operational Standards for Registration and Documentation* (2009), in conjunction with comprehensive registration exercises in the field, including the introduction

of biometric features. It directed EXCOM to draft a Conclusion containing general principles on which complementary forms of protection should be based and indicating which individuals might benefit from them. It created the 2007 *10 Point Plan on Refugee Protection and Mixed Migration*, a tool aiming to assist all stakeholders in incorporating refugee protection considerations into broader migration policies and field practices. It promoted local integration as a durable solution, leading the Refugee Agency to work jointly with states to establish a framework sensitive to the specificities of refugee needs, international and national legal standards, and the socioeconomic realities of hosting countries (UNHCR 2002; 2010a).

During the initial years of the Agenda, it became increasingly clear to UNHCR that the search for lasting solutions, especially in the case of protracted refugee situations, such as Colombian refugees in neighboring countries, had to include all relevant stakeholders on a much more permanent and substantial basis. The idea of such a forum of states and other stakeholders led to the creation of the Convention Plus initiatives. By 2005, this forum had gradually evolved into a global discussion of refugee protection, which led to the creation in 2007 of the High Commissioner's Dialogues on Protection Challenges (Clark and Simeon 2014, 15). The content of the Dialogues was inspired by the Agenda's goals, and upon completion of the latter in 2010, they became the main informal discussion forum on new or emerging global protection issues. They continue to represent an opportunity for annual discussions on specific protection issues. Some of these discussions are of direct relevance to the situation of Colombians refugees: examples include Refugee Protection, Durable Solutions and International Migration (2007), Protracted Refugee Situations (2008), Urban Refugees (2009) and Protection Gaps and Responses (2010) (UNHCR 2019b).

Unlike the Agenda, the Dialogues are not structured to elicit formal or agreed outcomes, with the notable exception of the 2010 Nansen Principles on climate change and displacement. Hence, their importance with regards to the protection challenges faced by Colombian refugees does not lie in drafting and signing specific agreements but rather in the evolution of the role and responsibilities of UNHCR, an evolution that led to its establishing a global forum to identify protection concerns of states and other stakeholders and seek solutions that benefit them as well as Colombian displacees. For instance, the 2010 Dialogue fostered discussion of the gaps in the existing international protection framework for forcibly displaced people, specifically in terms of international cooperation, burden sharing and comprehensive regional approaches as well as implementation and normative gaps (UNHCR 2010b). It also led to the above-mentioned 2011 intergovernmental ministerial-level meeting facilitated by UNHCR, where a number of states concerned with Colombian refugee inflows, such as Venezuela, made pledges to alleviate the suffering of these displaced communities. As such, one could argue that the evolution of UNHCR's role

and responsibilities through its establishment of successive international protection policy initiatives has enabled it, along with states and other stakeholders, to identify gaps in and suggest remedies for the protection framework of Colombian refugees in neighboring countries.

On the other hand, as mentioned above, a number of scholars have criticized the changes in UNHCR's role and responsibilities since the end of the Cold War, when it gradually began to expand its field of work beyond its original mandate. For example, Gilbert points to UNHCR's responsibilities under international law and states that the concept of responsibility has two facets: responsibility for what and responsibility to whom. He found that, with the expansion of its mandate, the Refugee Agency is not sufficiently accountable to populations of concern, host states where it conducts operations, NGO partners or fellow UN agencies. An additional difficulty is that multi-agency activity in many situations faced by UNHCR makes it intrinsically complex to attribute responsibility to any one actor. A potential solution to this issue would be to establish proper assessments of practices, which would improve performance by eliminating unofficial, ill-prepared analyses based on hearsay or the political agenda of influential donors (Gilbert 1998, 349 and 388).

Another strong criticism of UNHCR's role and responsibilities can be found in Chimni's 'Third World' approach to international law. He criticizes the largely overlooked knowledge production and dissemination functions of the Refugee Agency, which legitimized Western policies such as neglecting refugees from developing nations or using them as pawns in Cold War geopolitics, before eventually contributing to containing South-North refugee flows after the collapse of the Soviet Union. By 1989 a 'new approach' to international refugee law had replaced the established positivist doctrine and created a 'myth of difference': the idea that great dissimilarities characterized refugee flows from the Communist Bloc and developing nations. This 'new approach' advocated for rejecting refugee law as an avenue for economic exile, relying on voluntary repatriation, and recognizing the responsibility of the state of physical origin. Chimni argues that UNHCR played a large role in legitimizing the new approach and the ensuing Western containment rhetoric through its knowledge production and dissemination systems (Chimni 1998, 350-366). In this way, the Refugee Agency, going beyond its mandated protection role, actively promotes norms and expectations of international behavior in the field of refugee law, as well as framing issues for collective debate and proposing specific policy responses (Finnemore 1993, 594). It also identifies key points for negotiation in order to fill gaps in the normative framework and adjust to changes in the external environment. More specifically, Chimni views UNHCR's in-house publications, such as *Refugee* and *The State of the World's Refugees*, as having contributed to legitimizing the political agenda of

influential donors in establishing the 'new approach' to the interpretation of international refugee law and subsequent Western containment policies. Concretely, concepts such as in-country protection, preventive protection, the right to remain, temporary protection, closer cooperation with the Security Council, safe havens and safety zones have sought to operationalize the geopolitical interests of the dominant coalition of Northern member-states (Chimni 1998, 366-367). This criticism offers valuable insight that enables us to better understand the shortcomings of the changes to the role and responsibilities of the Refugee Agency and the biases involved in redefining the goals of the global refugee regime.

To summarize, this chapter has sought to analyze the initiatives undertaken by UNHCR from 2000 onwards in order to adapt its mandate and revitalize the international refugee regime in light of shifting worldwide geopolitical dynamics and refugee flows and in light of the changing nature of refugeehood itself. We have highlighted the positive impact that such developments have had on the protection situation of Colombian refugees in neighboring countries. Conversely, we have examined some of the criticisms that academics from both the West and the developing world have levelled against the Refugee Agency's expanding mandate, evolving role and responsibilities, lack of accountability and biases that have influenced the international refugee regime. Additional critical commentaries on the evolution of UNHCR can be found in the academic literature, but further analysis would be beyond the scope of this article. We ultimately conclude that while the above-mentioned criticisms are legitimate, they do not undermine the positive impact of UNHCR's recent international protection initiatives on the ongoing protection challenges faced by Colombian refugees in neighboring countries.

Conclusions

In light of the enduring major refugee flows crossing Colombia's international borders into neighboring states (especially Panama, Venezuela and Ecuador), this article has sought to demonstrate that the complex dynamics underlying the interregional political and security interests of Colombia's neighbors have led them to afford limited or no international protection status to the forced migrants.

The first major finding of this study concerns the consequences of specific political and domestic security interests of the governments of Panama, Venezuela and Ecuador in dealing with Colombian refugee outflows. We have highlighted a common pattern among these countries of downplaying the scope of the issue and granting limited or no international protection, in violation of their international obligations. These governments perceive granting refugee status to Colombian

displacees as a security threat to their institutions, welfare system and resources, as well as a political liability for the policymakers who would grant such recognition.

In the case of Panama, the unwillingness of the government to grant permanent protection to Colombian displacees, in clear violation of the norms set out in international refugee law, can be linked to several factors, such as concern for the stability of the small nation and its resources in the context of unprecedented refugee flows from a much larger neighbor, and the complicated historical relationship between the two countries, which dates back to the independence of Panama from Colombia in 1903. Large-scale recognition would mean not only acknowledging but highlighting the humanitarian and human rights violations occurring in Colombia, which would damage the improving relationship between the two governments.

In Venezuela, the failures of the RSD procedures and the lack of political will to recognize the dimensions of the Colombian humanitarian crisis can be explained by the fluctuating diplomatic relationship between the two countries. There were ideological tensions between President Chávez and President Uribe, but bilateral collaboration improved under President Santos. Nicolás Maduro followed the same path by sustaining a close working relationship with his counterpart in Bogotá. This increasingly close partnership meant that if Venezuela granted international protection to Colombian displacees, it could jeopardize the relationship between the countries. The situation further evolved with the 2010 outbreak of the Venezuelan Crisis, which gradually caused the nascent asylum system to break down, along with the entire civil administration. The fluctuating diplomatic relationship between the two neighbors (which reached an all-time low on January 23, 2019, when current Colombian president Iván Duque recognized Juan Guaidó as the legitimate president of Venezuela over Nicolás Maduro), combined with the consequences of the ongoing Venezuelan crisis, sheds light on the political dynamics at play in recognizing a large influx of refugees.

In the case of Ecuador, the deterioration of its protection regime, as exemplified by the end of the *Registro Ampliado* period, is indicative of its political and domestic security concerns. Among other things, one may highlight debates among policy-makers about the legal implications of a strict application of the Cartagena definition, concerns expressed by the Ecuadorian security forces over ever-increasing refugee flows, pacts between political parties before the 2013 general elections, and changing dynamics in regional politics, such as the close partnership between former president Rafael Correa and former president Juan Manuel Santos.

The second main finding relates to the impact of labelling practices on forced migrants. We found that the latter do not necessarily conform to the image or label imposed on them by the interests and procedures of NGOs, governments and intergovernmental agencies acting under the banner of humanitarianism. As such, there is a frequent mismatch between policy measures driven by specific agendas and the

ways that individuals conceived as subjects of such policies are ultimately defined by artificial and incomplete images. This study also underscored that in addition to its highly politicized effect on access to immediate rights and services as well as to durable solutions such as resettlement, labelling plays a major role in the shifting identities of victims forced to flee persecution. Individuals' self-perception is closely linked to the labels that are imposed on them, causing a potential increase in suffering if their experienced hardship is not recognized. Moreover, given the current large-scale global migratory flows, labelling has become politicized due to its legitimization of a mainstream political discourse of resistance to refugees and migrants, while simultaneously being portrayed as an apolitical set of bureaucratic categories.

In terms of the reasons for the proliferation of alternative national protection labels, we found that states such as Colombia's neighbors often see granting refugee status under the Geneva Convention as a legal constraint on their right to define their own immigration policies. However, the nexus between refugee status and the concept of asylum was rejected both in the 1951 Convention and at the 1977 Territorial Asylum Conference. In addition, Article 1C (5-6) of the Convention explicitly stipulates that refugee status entails a duty to protect only as long as a well-founded fear of persecution remains, allowing states to remain the final judges of whether to grant or withdraw such a legal protection label. Moreover, since refugee status is a declaratory and not a constitutive act, there should not be any distinct standards of legal protection when a receiving state uses some other label to refer to a Convention refugee. Even if forced migrants are not formally recognized with the refugee label, they ought to be protected by the system of incremental rights established under the Convention. We thus found that the governments of countries receiving Colombian refugee outflows cannot rely on their decision to regularly or exceptionally delay or avoid verification of refugee status, including by granting alternative labels, in order to bypass refugee rights protected under international public law.

The third key finding deals with the evolution of UNHCR's role and responsibilities through the establishment of successive international protection initiatives that are directly relevant to the issue of Colombian displacees in neighboring states. We found that in order to uphold the international refugee regime and ensure its own institutional survival, the Refugee Agency has had to expand the scope of its original mandate and has been forced into a process of constant institutional adaptation. This study found positive outcomes for Colombian refugees from UNHCR's evolving role and responsibilities. We found that the Agency's successive international protection initiatives led it to establish a global forum so that it, along with states and other stakeholders, could identify gaps in and suggest remedies for the protection framework of Colombian refugees.

However, UNHCR's tendency to assume an ever-increasing role in protecting new categories of displaced persons and its potential transformation into the UN's protection organization have been strongly criticized. Some have argued that given the expansion of its mandate, the Agency is not sufficiently accountable to populations of concern, host states where it conducts operations, NGO partners or fellow UN agencies. Others have pointed out that through its knowledge production and dissemination functions, UNHCR has played a large role in legitimizing the 'new approach' to the interpretation of international refugee law and subsequent Western containment policies. We found that such critical commentaries offer valuable insight that enables us to better understand the shortcomings of the changes to the role and responsibilities of the Refugee Agency and the biases involved in redefining the goals of the global refugee regime. However, we found that such criticism, while legitimate, does not undermine the positive impact of UNHCR's international protection initiatives on the search for durable solutions to the ongoing protection challenges faced by Colombian refugees in neighboring countries.

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