

DEADLY VENTURES? MULTINATIONAL CORPORATIONS AND PARAMILITARIES IN COLOMBIA

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Summary: I. INTRODUCTION. II. THE PARAMILITARIES IN THE COLOMBIAN CONFLICT. III. THE IMPACT ON HUMAN RIGHTS OF THE MULTINATIONAL ENTERPRISES-PARAMILITARIES RELATIONSHIP. IV. HOLDING MULTINATIONAL CORPORATIONS ACCOUNTABLE. V. CONCLUSIONS.

I. INTRODUCTION

The Colombian conflict is a long, complex and brutal one, where political grievances mix with economic interests over the rich resources of the country. One of its characteristics is the participation of external actors, from other states, mainly the United States, to foreign private investors. The activities and working methods of certain multinational corporations in Colombia have had a direct impact on the development of the conflict in certain areas, particularly through their relationship with the paramilitary groups that operate in those areas. This article analyses these relationships and the legal consequences that they have brought for the companies allegedly implicated in the murder, torture and intimidation of trade unionists. It presents a brief description of the Colombian conflict and the nature and role of the paramilitary groups on it, followed by an analysis of the relationship between the paramilitaries and certain multinational corporations and its impact on the human rights of the local population and specific groups such as trade unionists, social activists and human rights defenders. Finally this article analyses the legal initiatives to make these companies accountable before the United States courts, with particular focus in the cases against Coca-Cola Company, Drummond Company Inc. and Chiquita Brands International Inc. under the Alien Torts Claims Act.

II. THE PARAMILITARIES IN THE COLOMBIAN CONFLICT

Colombia's internal conflict, ongoing since 1940s, is the lengthiest armed conflict in the Western hemisphere¹. The *Autodefensas Unidas de Colombia* (AUC), which

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¹ The origins of the conflict can be traced back to the partisan violent confrontation between the Conservative and Liberal parties in the period from 1945 to 1965. These dates vary according to different analysts. The International Crisis Group (ICG) considers the assassination of Liberal leader Jorge Eliécer Gaitán in April 1948 as the trigger for the violence, ICG (2002), *Colombia's elusive quest for peace*, p. 2. This confrontation was so violent - by the time it ended 200,000 people were dead, and more than a billion dollars in property damage had occurred, International Crisis Group (2002)- that is it known as *La Violencia* (the violence). Both sides to the conflict organised "self-

amalgamated a variety of paramilitary groups, was until its recent demobilisation, the second largest illegal armed group participating in the conflict². The other two main groups³ that are still active in the conflict are the *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* (FARC-EP)⁴ and the *Ejército de Liberación Nacional* (ELN)⁵.

The current paramilitary power has its roots in rural self-defence groups created as protection of the local population against the guerrilla activities, as part of a counter-insurgency strategy promoted by the Colombian army since the 1960s⁶. During the 1970s and 80s these groups proliferated greatly, with close links with the security forces but still formed mainly by civilians⁷. Their activity was supported by local elites and landowners who used them as private security forces, and to suppress social protest in rural areas, mainly by targeting activists and peasant leaders, and even to eliminate political opponents⁸. It was during these years in which illicit drug trafficking, mainly cocaine, consolidated in Colombia. Drug-traffickers were responsible for large-scale funding of self-defence groups⁹ and since then paramilitaries and drug trafficking have been inextricably joined¹⁰.

defence groups” which were the germs of some of the current armed groups. This conflict was resolved through a power-sharing agreement between the Conservatives and the Liberals in 1958 (*Declaración de Sitges*), the so-called “National Front”. The arrangement did not include social and political forces other than the two main parties, which contributed to the consolidation of the endemic violence in Colombian political life.

² The figures of members of the AUC fluctuate from 14,000 to 18,000, with a striking 30,915 individuals having demobilised in the AUC demobilisation process, see below.

³ During the 1960s guerrilla movements proliferated in Colombia and throughout Latin America, in many cases as armed wings of existing communist parties. At this time these two groups, which still continue in the active fighting were formed. Other armed groups involved in the conflict have since demobilised and attempted to be integrated in political life. These are the *Ejército Popular de Liberación* (EPL) and the *Movimiento 19 de Abril* (M-19), see SRIRAM, C. L., *Peace and Governance. Power-Sharing, Armed Groups and Contemporary Peace Negotiations*, Palgrave, Hampshire, 2008, pp. 152-153.

⁴ The FARC, Colombia’s oldest and largest guerrilla group, established itself in 1966. Today the FARC has an estimated 18,000 members, including many women and children. Their forces are mainly peasants, and therefore it has had traditionally mainly a rural presence, however with a growing urban militia. However, recent events, have provoked an unprecedented voluntary demobilisation from FARC individuals, with some media reporting the desertion of over 3,000 FARC members in the last year, see for example, “Colombia’s campaign to win rebel minds”, *BBC News*, 23-01-08, available at <http://news.bbc.co.uk/2/hi/americas/7194377.stm#table>, last visited 7-08-08.

⁵ The ELN has an estimated of 3,500–4,000 combatants. It was formed in 1964, and was originally formed by intellectuals, university students and priests, SRIRAM, C. L., *op. cit.*, p. 153.

⁶ This strategy was based in the use of armed civilians as auxiliary to the security forces and the undermining of civilian support for the guerrillas, which were legally based in regulations allowing the army to create groups of armed civilians to carry out joint counter-insurgency operations. For a detail evolution of these groups and the legal regime that supported them see RANGEL, A., *El Poder Paramilitar*, Planeta, Bogotá, 2005 and AMNESTY INTERNATIONAL, *The Paramilitaries in Medellín: Demobilization or Legalization?*, AI Index: AMR 23/019/2005.

⁷ RANGEL, A., “A donde... *op. cit.*”, pp. 13-14.

⁸ LAMPANTE, L.J. AND THEIDON, K., “Transitional Justice in Times of Conflict: Colombia’s Ley de Justicia y Paz”, *Michigan Journal of International Law*, vol. 28, 2007, p. 51.

⁹ AMNESTY INTERNATIONAL, *op. cit.*, p. 6. For example by 1985 in the Magdalena Medio region drug traffickers, who had laundered funds by purchasing land, began large-scale funding of the self-defence groups. By 1986, self-defence groups and death squads using the MAS (*Muerte a Secuestradores*) and other names were operating in departments such as Antioquia, Boyaca, Caqueta, Cordoba, Cundinamarca, Meta, Putumayo and Santander.

¹⁰ *Ibid*, p. 5. LAMPANTE, L.J. AND THEIDON, K., *op. cit.*, it was the fusion of paramilitary organizations and drug trafficking that ultimately gave rise to the phenomenon known as *paramilitarismo*. According to Rangel the current phenomenon of paramilitarism in Colombia is the result of a political and military crisis of the Colombian state, of the rise of the guerrilla and the persistence of the drug-trafficking, RANGEL, A., “A donde... *op. cit.*”

In the second half of the 1990s the dispersed paramilitary groups multiplied and strengthened in an accelerated manner, growing faster than the insurgent groups. This uncontrolled strengthening of paramilitary groups changed the dynamic of the internal war in Colombian, making it more complex and difficult to resolve¹¹.

In 1997 the paramilitary leaders, the brothers Carlos and Fidel Castaño brought together eighteen paramilitary blocs which had been operating independently under one single command and formed the *Autodefensas Unidas de Colombia* (AUC)¹² as the national umbrella group of paramilitaries¹³. The organization developed a highly regimented military command structure, seeking to translate its military power and economic might into political capital¹⁴. Carlos Castaño became the political leader of the AUC, while Salvatore Mancuso adopted the role of military leader. It rapidly became the second largest irregular group in the country, with a size equivalent to 80% that of the FARC and three times larger than the ELN¹⁵. The AUC maintained strong links with drug-trafficking¹⁶.

In 2002 the AUC started a demobilisation process which is still going. Since 30,000 paramilitaries have disarmed and demobilised¹⁷ and those who participated in human rights violations are now been processed under the 2005 *Ley de Justicia y Paz* (Law of Justice and Peace)¹⁸. However, violence continued in certain areas and against certain groups.

¹¹ RANGEL, A., "A donde... *op. cit.*

¹² *Ibid*, as Alfredo Rangel has highlighted the rise of the paramilitary occurred during the military and political crisis during the government of President Ernesto Samper (1994-1998). It is not by chance the author sustains that the formation of the AUC happened only a few months after the FARC make its most devastating attack against a military post in Las Delicias, (Caquetá), where dozens of soldiers died and nearly a hundred were captured by the guerrilla.

¹³ However, even if under the umbrella of the AUC the main military nucleus has provided the hierarchical organisation of an irregular army, the groups were particularly complex and other types of support structures have also formed part of the paramilitary. Commentators have identified for example "vigilante" groups with a purely local action scope, specially urban, with the task to control crime and take justice in their own hand; "death squads", more professionalized than the previous ones, with a supra-local scope and dedicated to selective murder; "rural self-defences", composed by locals, whose main aim is to control the population, see KALYVAS, S. and ARJONA, A., "Paramilitarismo: una perspectiva teorica", in RANGEL, A. (ed), *op. cit.*

¹⁴ LAMPANTE, L.J. AND THEIDON, K., *op. cit.*

¹⁵ KALYVAS, S. and ARJONA, A., "Paramilitarismo: una perspectiva teorica", in RANGEL, A. (ed), *op. cit.*, the expansion of the paramilitary took place in a fourth of the time of the existence of the guerrillas in Colombia. These groups have acquired an important military confrontation capacity even if they do not have the long experience, and in some cases not even the fire power of the guerrilla. These limitations, however, have been attenuated with the incorporations to its *filas* of ex members of the regular military forces and deserters of the guerrilla groups. Since the creation of the AUC the paramilitary groups have experimented an exponential growth both in terms of men and territory.

¹⁶ AMNESTY INTERNATIONAL, *op. cit.*, p. 9, Carlos Castaño had claimed that 70% of AUC revenue came from the drug trade.

¹⁷ MAPP/OEA, Seventh Quarterly Report of the Secretary General to the Permanent Council of the Mission to Support the Peace Process in Colombia, OEA/Ser., CP/doc. 4148/06, August 2006.

¹⁸ This process has received important international attention and the *Ley de Justicia y Paz* has been severely criticized by human rights groups and scholars for not guaranteeing the rights of victims to truth, reparation and reconciliation. See for example GOMEZ ISA, F., "Justicia, verdad y reparacion en el proceso de desmovilizacion paramilitar en Colombia", in GOMEZ ISA, F. (dir.), *Colombia en su laberinto*, Calatraba, Madrid, 2008, pp. 87-142; GOMEZ ISA, F., Paramilitary demobilisation in Colombia: Between Peace and Justice, FRIDE, 57 Working Paper, 2008, available at <http://www.fride.org/expert/72/felipe-gomez-isa>, last visited 5-08-2008; UPRIMNY, R., "Transitional Justice without Transition? Possible Lessons from the Use (and Misuse) of Transitional Justice

All the parties in the conflict, the illegal armed groups as well as the national army, are responsible for severe human rights violations against the civilian population, amounting to a humanitarian crisis that has attracted the attention of the international community. According to Amnesty International¹⁹ 70,000 people have been killed and thousands more have being kidnapped, tortured, forcefully recruited by illegal armed groups, disappeared and internally displaced only in the last 20 years²⁰. The paramilitaries have been responsible for the greater majority of these crimes, including the participation in massacres. Their action methods, promoted by the security forces in the framework of the counter-insurgency strategy, focused on the undermining of the civilian support to the guerrilla. They have proved particularly violent and cruel, attacking civilians indiscriminately. However some groups have been disproportionately targeted, such as indigenous and Afro-Colombians communities²¹ and human rights defenders, peasant farmer leaders, trade unionist, and other social activist. The argument that these individuals were supporters of the guerrilla was used to target them, as well as terrorise and displace entire communities. Domestic and international human rights organizations have documented the continued collusion between the military and paramilitaries in these actions²². Some of the massacres for which the paramilitary have been responsible were considered by the Inter-American Court of Human Rights in the cases of `La Rochela²³, Maripan²⁴, the case 19 tradesmen²⁵, the massacres of Ituango²⁶ and the massacre of Pueblo Bello²⁷.

III. THE IMPACT ON HUMAN RIGHTS OF THE MULTINATIONAL ENTERPRISES-PARAMILITARIES RELATIONSHIP

The Colombian conflict has transformed over time, and together with the political claims of each group it has been affected by disputes over economic resources. It is widely known that all parties benefited from the production and trade of coca, but other

Discourse in Colombia”, Expert paper, *International Conference Building a Future on Peace and justice*, Nuremberg, 25-27 June 2007, p. 2, available at <http://www.peace-justice-conference.info/documents.asp>, last visited 24-03-2008; LAMPANTE, L.J. AND THEIDON, K., *op. cit.*

¹⁹ AMNESTY INTERNATIONAL, *op. cit.*, p. 2.

²⁰ *Ibid*, according to the organisation three million people have being displaced since 1985. These futures are corroborated by UNHCR, which established in 2006 that there were three million internally displaced people in Colombia, UNHCR, *Statistical Year Book, Trends in Displacement, Protection and Solutions*, 2006, available at <http://www.unhcr.org/statistics/STATISTICS/478cda572.html>, in particular see Annex, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?id=478ce34a2&tbl=STATISTICS>, last visited 24 March 2008.

²¹ LAMPANTE, L.J. AND THEIDON, K., *op. cit.*, p.56.

²² AMNESTY INTERNATIONAL, *op. cit.*, p. 4. See also, HUMAN RIGHTS WATCH, *The “Sixth Division”: Military-Paramilitary Ties and U.S. Policy in Colombia*, 2001, available at <http://www.hrw.org/reports/2001/colombia/6theng.pdf>; HUMAN RIGHTS WATCH, *The Ties That Bind: Colombia and Military-Paramilitary Links*, 2000, available at <http://www.hrw.org/reports/2000/colombia>.

²³ *Caso de la Masacre de La Rochela vs. Colombia*, Sentencia de 11 de mayo de 2007 (Fondo, Reparaciones y Costas).

²⁴ *Caso de la “Masacre de Mapiripán” vs. Colombia*, Sentencia de 15 septiembre de 2005 (Fondo, Reparaciones y Costas).

²⁵ *Caso 19 Comerciantes vs. Colombia*, Sentencia de 5 de julio de 2004 (Fondo, Reparaciones y Costas).

²⁶ *Caso de las Masacres de Ituango vs. Colombia*, Sentencia de 1 de julio de 2006, (Excepción Preliminar, Fondo, Reparaciones y Costas).

²⁷ *Caso Masacre de Pueblo Bello*, Sentencia 31 enero de 2006, (Reparaciones y Costas).

resources such as oil, emeralds, gold, legal crops such as bananas and palm oil, and cattle have played a significant role in the conflict, and, importantly, attracted the intervention of external actors²⁸. The conflict has thus experienced an internationalisation through the participation of other states, in particular the United States which has invested millions of dollars to combat the coca trade through its *Plan Colombia*, but also economic actors including large multinational corporations²⁹.

Even as illegal activities have played a crucial role in the Colombian conflict, there is also another important economic dimension to take into account: the role of private foreign investors involved in the legal extraction, production, trading and/or commercialisation of resources and products. Their implication in the conflict has been directly related to the lack of effective control that the state apparatus exercises over certain parts of the country, mostly rural areas. This means that in certain regions armed groups have an effective control over the territory, the institutions and all in all, over everyday life³⁰. This not only makes it easy for drug cultivation and trafficking to be developed and maintained, but has also meant that private investors have had to negotiate with those in control of the territory in order to gain access to resources. A common feature of both guerrilla and paramilitary ascension during the conflict has been the use of this lack of control over the territory to establish independent relationships with the companies operating in the areas under their control.

The relationship between paramilitary groups and foreign companies, mostly transnational corporations has been denounced for several years, and beginning in 2001 it has come before the United States Courts. This relationship has now been uncovered publicly and recognised by both sides. In March 2007 the multinational corporation Chiquita Brands International Inc. admitted publicly that it had made payments to the paramilitaries from 1997 to 2004³¹. The company claimed that it had no other choice and it had been forced to pay *vacuna* to the guerrilla when they had control of the territory and then to the paramilitaries when they took control over it. The president of Chiquita justified the payments to the paramilitaries due to their capacity to intimidate, claiming that there were only two options: pay for the protection of the paramilitaries or run the risk of seeing their employers killed or kidnapped³². After admitting payments to the AUC, Chiquita also admitted having paid the FARC³³.

²⁸ For the role of economic factors in the development of the Colombian conflict see, QUAQUETA, A., "The Colombian conflict: political and economic dimensions", in BALLENTINE, K. AND SHERMAN, J., *The Political Economy of Armed Conflict. Beyond Greed and Grievance*, Lynne Rienner, Boulder, 2003, pp. 73-106.

²⁹ SRIRAM, C. L., pp. 145, 148-151.

³⁰ As Kimberly Theidon has documented in certain regions some youngsters have limited options but joining the armed group who dominates in their area. THEIDON, K., "Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia", *The International Journal of Transitional Justice*, Vol. 1, 2007, p. 66.

³¹ The company pleaded guilty of paying \$1.7 million from 1997 to 2004 to the AUC, "Families Sue Chiquita in Deaths of 5 Men", *The New York Times*, 17-03-2008.

³² "'Todas las bananeras de Urabá le pagaron a las AUC', asegura Salvatore Mancuso a la CBS", *El tiempo*, 12-05-08.

³³ Ed Loyd, a spokesman for Chiquita, sustained that payments to FARC were made during the 1990s to ensure the safety of Chiquita employees working on banana plantations near the Panamanian border, a former stronghold of the leftist guerrillas, "Families Sue Chiquita in Deaths of 5 Men", *The New York Times*, 17-03-2008.

In the context of the demobilisation of the paramilitaries the so called *versiones libres* (free versions, volunteered confessions of the demobilised paramilitaries in the framework of the trials under the Justice and Peace Law) have confirmed the relationships between the paramilitaries and the companies Chiquita, Del Monte and Dole. Salvatore Mancuso, the leader of the paramilitaries, asserted that all the fruit companies operating in the Caribe Coast had to pay a percentage of the exports to their organisation. He declared that the AUC had acted as a State, providing the protection which allowed companies to continue investing and obtaining financial benefits³⁴. According to Mancuso, however, there was no need to pressure, blackmail or threaten the banana producing companies into paying such percentages, as they did it voluntarily and willingly.

The reality is that over the last 30 years the paramilitaries have acted as private security forces for elites and landowners and used to suppress social protest in rural areas³⁵. These services have allegedly been provided to companies too. In this sense certain multinational corporations have been involved in the use of these paramilitary groups to resolve labour disputes, but also allegedly have used their terrorising power to displace entire local populations in order to use their land for their investments. The displacement of population has generally followed military campaigns by the army and paramilitary groups against guerrilla groups, which resulted in the coercion of peasants into selling their land or their direct expulsion through threats, intimidation and even summary executions. Banana companies and more recently palm growers, for the production of biofuels, followed the vacation of the land to establish their plantations³⁶.

Trade unionists have been particularly targeted by the paramilitaries, and most of the violence has been directed at leaders of unions of multinational corporations. Colombia has been branded as the most dangerous place in the world for trade unionists³⁷. Several

³⁴ *Ibid.*

³⁵ LAMPANTE, L.J. AND THEIDON, K., *op. cit.*, p. 51.

³⁶ The report by NORWEGIAN REFUGEE COUNCIL and INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC) *Resistencia al desplazamiento por combatientes y agentes de desarrollo: Zonas humanitarias en el Nor-Occidente Colombiano*, Geneva, 2007, the exposes the so called "Operacion Genesis" in which, in 1996, the army and the paramilitary groups forced the displacement of 15,000 to 17,000 people, mainly peasants, through air raids, economic blockage, pillage, burne of houses and crops, massacres, kidnappings, torture and arbitrary detention of civilians, in the so called "banana axis" of the region of Uraba. Since 2000 a group of palm plantation companies established in the areas of Jiguamiando y Curvarado, after the backlashes of the guerrillas and the army and paramilitary groups, taking over the land of the displaced population. Between 2005 and 2007 the area of the palm plantations increased from 4.000 to 7.000 in both areas.

The NGO War on Want has denounced the relationship between the armed forces, paramilitary groups and palm producers, alleging that they have been involved in extortions, extrajudicial executions and threats to prompt the displacement of the local population, mainly of the African-Colombian communities of the region of Narino, in the border with Ecuador. According to its report, there are claims that since October 2007 as much as 70% of the population of Narino's eastern mountain range have been displaced, see WAR ON WANT, *Fuelling Fear: The human cost of biofuels in Colombia*, London, 2008, available at <http://www.waronwant.org/Fuelling20Fear+15878.twl>, last visited 7-08-08.

³⁷ See INTERNATIONAL LABOR RIGHTS FORUM (ILRF), *Annual Report: The most dangerous country in the world for union organising continued to be Colombia in 2006*, available at <http://www.laborrights.org/end-violence-against-trade-unions/colombia>, last visited 20-06-08; US LABOR EDUCATION IN THE AMERICAS PROJECT (US LEAP), data available at www.usleap.org, last visited 20-06-08; AMNESTY INTERNATIONAL, *Killings, arbitrary detentions and death threats- the reality of trade unionism in Colombia*, AI Index: AMR 23/001/2007, available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGAMR230012007>, last visited 20-06-08.

organisations have reported that over 2,000 trade unionist have been assassinated since the 1990s³⁸. According to the International Trade Unions Confederation, 78 out of 144 total trade unionist murdered in the world in 2007 were Colombians³⁹. Only in the first 6 months of 2008, 39 trade unionists are reported to have been killed⁴⁰. Even if a decline in these deaths reported by the Uribe government⁴¹, violence has increased significantly in 2008 despite the demobilisation of the AUC⁴². Trade unionists are also subject to intimidation, threats, kidnappings, unlawful detention and brutal beatings⁴³, which are not fully reflected in the statistics.

IV. HOLDING MULTINATIONAL CORPORATIONS ACCOUNTABLE

The issue of the responsibility of multinational corporations for their participation in human rights violations has been on the international agenda for over a decade⁴⁴. High profile cases have brought to the public attention allegations of participation in human rights and environmental violations and numerous legal and compliance initiatives have flourished. These range from voluntary corporate codes⁴⁵, soft law instruments⁴⁶, hybrid schemes including states, companies and civil society⁴⁷, and even attempts to draft a

³⁸ Amnesty international reports more than 2,000 deaths and 183 forced disappearances in the last two decades, AMNESTY INTERNATIONAL, *Killings... op. cit.*, p. 1.; the Escuela Nacional Sindical, a Colombian NGO for the research, education, promotion and advice of Colombian trade unionists, reports 2,515 murders of men and women from 1986 to 2007, CORREA MONTOLLA, G., “2.515 o esa siniestra capacidad de olvidar”, *Cuaderno de Derechos Humanos*, N° 19, 2007, available at www.ens.org.co, last visited 20-06-08.

³⁹ INTERNATIONAL TRADE UNIONS CONFEDERATION (ITUC), *Annual Survey on Violations of Trade Union Rights*, 2007, p. 1, available at <http://survey07.ituc-csi.org/getcontinent.php?IDContinent=0&IDLang=EN>, last visited 20-06-08. The trade union Sinaltrainal, however, elevates this figure to over 4,000 men and women, most of them at the hands of the AUC, see SINALTRAINAL, *Ampliado caso 2595 OIT por Violación derecho a la vida trabajadores Coca cola*, 05-06-2008, available at http://www.sinaltrainal.org/index.php?option=com_content&task=view&id=365&Itemid=34, last visited 20-06-08.

⁴⁰ US LEAP; see also ESCUELA NACIONAL SINDICAL, *La coyuntura laboral y sindical. Hechos y cifras más relevantes*, 2008, reporting an increase of 71.4 % in murders in the first months of 2008 in relation to the same period of 2007, available at www.ens.org.co, last visited 20-06-08.

⁴¹ In May 2007 in a press conference during an official visit to Washington DC President Uribe asserted that “there is no assassinations of workers in Colombia”, in “Colombia’s Uribe ends Washington visit with fate of free trade agreement still uncertain”, *International Herald Tribune*, 4-05-07. Statistically deaths went down from 72 in 2006 to 39 in 2007 according to Escuela Nacional Sindical.

⁴² See US LEAP.

⁴³ COLLINSWORTH, T., “International civil liberties report”, *American Civil Liberties Union*, 2001, p. 106, available at www.aclu.org, last visited 20-06-08.

⁴⁴ In general for the applicability of International human rights standards to the activities and working methods of multinational corporations see, for example MARTIN-ORTEGA, O., *Empresas Multinacionales y Derechos Humanos en Derecho Internacional*, Bosch, Barcelona, 2008.

⁴⁵ During the 1990s a plethora of corporate codes of conduct, social reporting and corporate lead labelling schemes flourished. For the evolution of such initiatives see for example, Sol Piccioto, “Rights, Responsibilities and Regulation of International Business”, *Columbia Journal of Transnational Law*, 2003, vol. 42, pp. 131-152. These instruments mainly dealt with corporate behaviour in the marketplace towards competitors and consumers. They have increasingly included references to labour and environmental practices, and ultimately some of them included wider human rights provisions, see MARTIN-ORTEGA, O. and WALLCE, R.M.M., “The interaction between corporate codes of conduct and international law: a study of women and children in the textile industry”, in TULLY, S. (ed.), *Research handbook on corporate legal responsibility*, Edward Elgar, Northampton, 2005, pp. 304-305.

⁴⁶ Both the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines on Multinational Enterprises were reviewed and updated in 2000.

⁴⁷ Most notably the UN Global Compact of the Secretary General, launched in 1999.

binding set of standards directly applicable to companies⁴⁸. The UN Special Representative of the Secretary General on the issue of human rights and transnational corporations is currently working on developing the international legal framework in which these entities act⁴⁹. In recent years the attention has increasingly been placed on the role of multinational enterprises in armed conflicts and the impact of their activities on the character and duration of the conflict and the scale of human rights abuses committed⁵⁰.

The debate has centred on the applicability of human rights standards to multinational enterprises and their scope. One of the main hurdles in the advancement of the issue has been the lack of an international forum for the enforcement of such standards. National courts have to some extent made up for the lack of international venues to deal with the responsibility of multinational corporations. The most active national forum has been the United States, due to its unique legal instrument, which provides jurisdiction to federal courts to trial tort cases committed abroad by non-US nationals: the Alien Tort Claims Act (ATCA). This is a 1789 statute, which has now become one of the corporate responsibility instruments preferred by legal claimants⁵¹. The instrument has been

⁴⁸ The UN Sub-commission on the Promotion and Protection of Human Rights attempted to draw direct obligations for companies, including in the context of armed conflicts, through the drafting of the UN Norms on Responsibilities for Transnational Corporations and Other Business Enterprises on Human Rights (U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003), approved August 13, 2003, by Resolution 2003/16. This initiative was finally unsuccessful.

⁴⁹ In his latest report Professor John Ruggie offered a framework based on the duty of the state to protect, the duty of the companies to respect and the need to provide victims with adequate fora for remedy. See, *Protect, Respect and Remedy, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises*, UN Doc. A/HRC/8/5, 7 April 2008. Ruggie's mandate has been extended for another 3 years, see Resolution of the Human Rights Council 8/7, 28 June 2008.

⁵⁰ This relationship has even been considered at UN Security Council level, in relation to the illegal exploitations of natural resources in the DRC and the impact of the Liberian diamond trade in fuelling the conflict in Sierra Leone, UN Security Council Resolution 1457 on the *Illicit Exploitation of Natural Resources in the Democratic Republic of Congo*, UN Doc. S/RES/1457, 24 January 2003, following the Final Report of the Panel of Experts on the matter, UN Doc. S/2002/1146, 16 October 2002; and Resolution 1343, UN Doc. S/2001/1343, 7 March 2001, respectively. In general on multinational enterprises and human rights in the context of armed conflict see, MARTIN-ORTEGA, O., "Business and Human Rights in Conflict", *Ethics & International Affairs*, vol. 22, no. 3, 2008, pp. 273-283.

⁵¹ The Statute § 1350 reads: "The district courts shall have original jurisdiction over any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States". The legal scholarship has written extensively on the application of the ATCA to corporations, some examples are: KHOKRYAKOVA, A., "Baenal v. Freeport MacMoran, Inc: Liability of a private actor for an international environmental tort under the Alien Tort Claims Act", *Colorado Journal of International Law*, 1998, vol. 9, no. 2, pp. 463-493; BLUMBERG, P. I., "Asserting human rights against multinational corporations under United States law: Conceptual and procedural problems", *American Journal of Comparative Law*, 2002:50, pp. 493-529; STEPHENS, B., "Translating Filártiga: a comparative and international law analysis of domestic remedies for international human rights violations", *Yale Journal of International Law*, 2002: 27, 1, pp. 1-57. BRIDGEFORD, T. A., "Importing human rights obligations on multinational corporations: The Ninth Circuit strikes again in judicial activism", *American University International Law Review*, 2003: 18, pp. 1009-1056; DELANEY, L., "Flores v. Southern Copper Corporation: the Second Circuit fails to set a threshold for corporate Alien Tort Claims Act liability", *Northwestern Journal of International Law and Business*, 2005: 25, 1, pp. 205-228; ROSENCRANZ, A. and LOUK, D., "Doe v. Unocal: holding corporations liable for human rights abuses on their watch", *Chapman Law Review*, 2005:8, pp. 135-152. In Spanish see, ZAMORA CABOT, F., "Casos recientes de aplicación de la Alien Tort Claims Act (ATCA) of 1789, de los EEUU, respecto de las corporaciones multinacionales", in *Obra Homenaje al Profesor Julio D. Gonzalez Campos*, Tomo II, Eurolex, Madrid, 2005, pp. 1837-1855; ZAMORA CABOT, F., "Una luz en el corazón de las tinieblas: La Alien Tort Claims Act (ATCA) of 1789 de los Estados Unidos", in AAVV, *Soberanía del Estado y Derecho Internacional. Obra Homenaje al Profesor Juan Antonio Carrillo Salcedo*, Sevilla, 2005, pp. 1381-1394; ZAMORA CABOT, F., "Los derechos fundamentales en clave del Alien Tort Claims Act (ATCA) of 1789 de los EEUU y su aplicación a las

complemented by the 1991 Torture Victim Protection Act (TVPA) which is also used in the law suits against corporations⁵².

The Colombia case is one of the most prominent examples of human rights violations within the framework of an armed conflict to which multinational corporations have a direct link. Human rights organisations have resorted to several tools to make them accountable for their actions, from highly publicised advocacy and naming and shaming campaigns⁵³, a process before the Permanent People's Tribunal⁵⁴ and several law suits in the United States.

The process in the Permanent Peoples' Tribunal in relation to Colombia began in November 2005 in Bern, Switzerland⁵⁵, against several companies, for their policies and practices in Colombia. In July 2008 it delivered judgement on 43 companies accused of having ties with paramilitary groups, forced displacements of communities and assassinations of trade unionists⁵⁶. The Tribunal considered the Colombian Government equally responsible for allowing those violations. Among the companies that the Tribunal considered, according to the Colombian trade union Sinaltrainal: Coca-Cola, Nestlé, Chiquita Brands, BP, OXI, Repsol, Cemex, Occidental Petroleum, Muriel, Glencore-Xtrata, Anglo American, Bhp Billington, Anglo Gold, Monsanto, Smurfit Kapa – Cartón de Colombia, Multifruits S.A. – Delmonte, Pizano S.A and its subsidiary Maderas del Darién, Urapalma S.A, Dyncorp; Unión Fenosa, Aguas de Barcelona, Canal Isabel II, Endesa, Telefónica y TQ3⁵⁷. The Colombian government and the home countries of the cited companies are also being processed in this trial.

Before the United States courts, there are three landmark cases currently considering the relationship between the paramilitaries and multinational enterprises and their alleged participation in the murder of trade unionists⁵⁸. The facts and main arguments of the cases are discussed below.

corporaciones multinacionales: "The ATCA Revisited", *Derechos Humanos y Conflictos Internacionales. Cursos de Derecho Internacional y Relaciones Internacionales Vitoria-Gasteiz*, Universidad del País Vasco, 2006.

⁵² The TVPA created liability for any "individual who, under actual or apparent authority, or color of law, of any foreign nation: 1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or 2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death".

⁵³ Several NGOs have campaigned internationally to denounce corporate human rights violations as the different reports from Amnesty International, Human Rights Watch, the International Labor Rights Forum, the Norwegian Refugee Council cited here, and many others, show. The *Sinaltrainal vs. Coca-Cola* case referred to below has trigger a world wide campaign against the company Coca-cola, information in this campaign can be found in www.cokewatch.org. A similar campaign is the Stop Killer Coke, see www.killercoke.org.

⁵⁴ This is an international opinion tribunal not attached to any particular State authority that examines and judges complaints regarding violations of human rights and rights of peoples. The claims are submitted by the victims themselves or groups representing them. It was founded in June 1979 in Italy by law experts, writers and other intellectuals. It was inspired by the 'Russell Tribunals' on Vietnam.

⁵⁵ The Tribunal was headed by the Nobel Price winner Adolfo Perez Esquivel.

⁵⁶ <http://www.business-humanrights.org/Documents/PermanentPeoplesTribunal>, last visited, 07-08-08.

⁵⁷ <http://www.sinaltrainal.org/images/stories/edgar/convocatoriainternal.pdf>, last visited 20-06-08.

⁵⁸ Other companies are also in the spot light, for example, the flower trader Dole and Nestle, concerning activities in its bottling plants. Their workers were invited to tell their stories in the US Congress, see, ILRF, *op. cit.*

1. The Coca-Cola Company

In 2001 the Colombian trade union *Sindicato Nacional de Trabajadores de la Industria de Alimentos* (Sinaltrainal) filed a complaint under the ATCA and the TVPA against Coca-Cola and two of its Colombian bottlers- Bebidas y Alimentos and Panamerican Beverages, Inc. (Panamco)- in the Federal District Court of Florida⁵⁹, for the murder of one of its union leaders, Isidro Gil at the Bebidas bottling plant in Carepa, and the kidnapping, torture, unlawful detention and death threats to other workers and union leaders. The plaintiffs alleged that the companies hired, contracted with or otherwise directed paramilitary security forces that murdered and tortured the leaders of Sinaltrainal. The plaintiffs provided evidence that the paramilitaries and the management of the bottling plants had acted in concert to perpetrate such acts and to terrorise the rest of the union members in order to force them to resign, and ultimately destroy the local Sinaltrainal union. In particular the plaintiffs allege that the paramilitary was invited into the plants by the managers⁶⁰.

The plaintiffs sought to hold Coca-Cola liable for the activities of its subsidiaries. The facts were uncontested, but Coca-Cola insisted it was not liable because it did not own the bottling plants in Colombia and therefore had not control over them⁶¹. In 2003, the Court dismissed the case against Coca-Cola, but it allowed the case to proceed against the two bottlers⁶². In September 2006, however, the Court dismissed the claims against the two Coca-Cola bottlers and rejected the plaintiffs' attempt to bring Coca-Cola back into the lawsuit⁶³. The plaintiffs had argued that the paramilitary acts constituted war crimes, and therefore did not require a showing of state action. The Court held that the claimants had failed to make the necessary allegations to sustain such a claim. The Court found that they did not assert that the alleged offences were acts of war committed by combatants in the course of hostilities, and that therefore they had failed to adequately plead facts that could give rise to either war crimes, genocide or crimes against humanity⁶⁴. The Court also rejected the argument of the plaintiffs that the

⁵⁹ *Sinaltrainal vs. The Coca-Cola Co.*, No. 01-03208-CIV, July 21, 2001. The complaint includes the kidnapping and torture of union leader Jorge Humberto Leal, the six-months incarceration of three Coca-Cola bottling workers and union leaders in Bucaramanga, under false criminal charges, and the death treats against Juan Carlos Galvis, the president of the union in Barrancabermeja. The case was filed by the International Labor Rights Forum and the United Steelworkers Union on behalf on Sinaltrainal. COLLINGSWORTH, T., *op. cit.*, since 1996 Sinaltrainal had been writing letters to Coca-Cola and to the US Embassy in Bogotá demanding the end of the targeting of trade union leaders at Coca-Cola bottling plants, with neither institutions replying to its requests. The Government of Colombia had also failed to take action to find and arrest the paramilitary commanders, who in some cases, had been specifically identified by victims or other witnesses.

⁶⁰ *Sinaltrainal vs. Coca-Cola Co.*, 256 Fed. Supp. 2d, 1345, (S.D. Fla, 2003), at 1350; COLLINGSWORTH, T., *op. cit.*, p. 106, there is evidence, based upon eyewitness testimony and records from investigations of the Government of Colombia, that one of the trade unionist, Isidro Gil, was murdered inside the Coca-Cola bottling plant in Carepa by paramilitaries, and these were invited into the plant by the manager. The day after Mr. Gil's murder, the paramilitary returned to the plant to collected resignation letters of the remaining union members, under threat of those who refused to resign meeting his same fate.

⁶¹ *Ibid.*

⁶² *Sinaltrainal vs. Coca-Cola Co.*, 256 Fed. Supp. 2d, 1345, (S.D. Fla, 2003). The plaintiffs continued pursuing the responsibility of Coca-Cola for its direct implication, and in 2004 filed an amended complaint seeking to include Coca-Cola in the lawsuit due to its part ownership of Panamco through a 2003 acquisition.

⁶³ *In Re Sinaltrainal Litigation*, 474 F. Supp. 2d 1273 (S.D.Fla 2006), at. 1289.

⁶⁴ *Ibid.*, at 1289.

companies affirmatively acted to benefit from the civil war by making arrangements to have the paramilitary target their union leaders⁶⁵.

Sinaltrainal has also presented a formal complaint before the ILO against the government of Colombia for the violation of the ILO Conventions num. 87 and 98 on freedom of association and the protection of the rights to organise and to collective bargaining. The claim was presented in September 2007⁶⁶ and in June 2008 it was extended to consideration of the right to life of nine of its members and the threats to many others and their families⁶⁷. The trade union has complained publicly that its president and nine other trade unionists have received death threats from the paramilitary group Nueva Generacion Aguilas Negras (Bloque Paramilitar de Bucaramanga) accusing them of being guerrilla members⁶⁸.

2. Drummond Company, Inc.

In 2002 the trade union *Sindicato Nacional de Trabajadores de la Industria Minera y Energetica* (Sintramienergética) and the families of three labour leaders filed a suit against the coal mining corporation Drummond Company, Inc., its wholly-owned subsidiary Drummond Ltd. and the chief executive officer of the former, Garry N. Drummond, in the Northern District of Alabama federal court. The plaintiffs alleged that Drummond hired Colombian paramilitaries to kill and torture Valmore Lacarno Rodriguez, Victor Hugo Orcasita Amaya and Gustavo Soler Morea in 2001⁶⁹. The plaintiffs alleged that the paramilitaries were acting as the defendant's agents, evidenced by the fact that the paramilitaries killed the trade unionists after having been allowed into the mining facilities by the defendants.

The case was brought under the ATCA, the TVPA and Alabama state law. In 2003 the Court dismissed the state law and TVPA claims and one of the ATCA claims⁷⁰, but allowed the plaintiffs to proceed with another ATCA claim for the war crime of extrajudicial killing and for denial of fundamental rights to associate and organise⁷¹. In March 2007, the court ruled that the case against the subsidiary company Drummond Ltd. would proceed to trial for the claim of aiding and abetting in extrajudicial killing which amounted to a war crime, but dismissed the case against the parent company Drummond Company, Inc⁷². The trial was held in July 2007. The *Juan Aguas Romero vs. Drummond Company Inc.* is therefore the first ATCA case against a corporation to

⁶⁵ *Ibid.*

⁶⁶ ILO, Committee on Freedom of Association, Report No. 38, Vol. XC, 2007, Series B, No. 3, Case 2595 (Colombia).

⁶⁷ *Ampliado caso 2595 OIT por Violación derecho a la vida trabajadores Coca cola*, Sinaltrainal, 05-06-08 in www.sinaltrainal.org, last visited 20-06-08.

⁶⁸ The death threat note is reproduced in www.sinaltrainal.org, last visited 20-06-08. See as well the denounces of these death threats by Amnesty International, available at http://www.amnesty.org.uk/actions_details.asp?ActionID=358, last visited 19-08-08.

⁶⁹ *Estate of Rodriguez vs. Drummond*, No. CV-02-BE-0665-W.

⁷⁰ The Court considered that the genocide exception to state action requirement of ATCA was not applicable, *Estate of Rodriguez vs. Drummond*, 256 F. Supp. 2d 1250, (N.D. Ala. 2003) at 1250.

⁷¹ The court considered that the trade union had sufficiently alleged that the mining company acted in conjunction with the paramilitary units to violate the law of war by paying units to murder trade union leaders, *ibid.*

⁷² Order Drummond, No. CV-03-BE-0575-W (05-March-07).

go to trial. The jury found that Drummond should not be held liable for the deaths of the three murdered labour leaders and acquitted the company⁷³. The case was appealed to 11th Circuit in December 2007, which appeal is still pending.

3. Chiquita Brands International

As mentioned above, in May 2007, Chiquita admitted making payment to the AUC from 1997 to 2004. Such statements were made in the framework of a criminal prosecution by the United States government, which was settled after Chiquita agreed to pay a fine⁷⁴.

Following such events the families of several trade unionists, workers and social activists killed by the paramilitaries brought several claims against the company in different courts of the United States. The cases were brought before the federal courts of the District of Columbia⁷⁵, Florida⁷⁶, New Jersey⁷⁷, and New York⁷⁸ during 2007. They all have in common the claims that payments Chiquita made to the paramilitaries during this period made it complicit in the extrajudicial killings, torture, forced disappearances, crimes against humanity and war crimes perpetuated by them. In February 2008, the US Multidistrict Litigation Panel consolidated these lawsuits into only one under the jurisdiction of the federal district court of Florida⁷⁹. At the time of writing no further development have taken place in this process. Chiquita is also facing a law suit for its alleged complicity in the crimes committed by the FARC⁸⁰.

V. CONCLUSIONS

This article has analysed the relationships between the paramilitary armed groups in Colombia and certain multinational corporations and their impact on human rights. The delimitation of the legal responsibility of these corporations forms part of the wider issue of how to make corporate actors accountable for their participation in human rights abuses and whether international law provides adequate standards and mechanisms for this. It seems to be commonly accepted now that corporations, as global

⁷³ The insurmountable procedural problems encountered by the plaintiffs during trial, including the impossibility to obtain testimony from Colombian witnesses and the court's refusal to allow out-of-court statements of former paramilitary members into the record, are described in the appellants opening brief for the appeal before the 11th Circuit, *Juan Aguas Romero et. al v. Drummond Company Inc.* et al, 07-14090-D, see as well MACLAUGHLIN, J. T., and BELL, J. H., "New limitations on the exercise of jurisdiction under the Alien Tort Statue", American Law Institute, 2008.

⁷⁴ According to several sources this fine was of \$25 million, see for example, "Chiquita banana company is fined \$25m for paying off Colombian paramilitary groups", *The Independent*, 16-03-07; "Chiquita: \$25M fine for terror payments", *CNN.com*, 11-09-07; "US banana firm must pay \$25m fine", *BBC News*, 17-09-07.

⁷⁵ *Jane/John Does 1-144 v. Chiquita Brands International, Inc.*, C.A. No. 1:07-1048.

⁷⁶ *Antonio Gonzalez Carrizosa, et al. v. Chiquita Brands International, Inc., et al.*, C.A. No. 0:07-60821.

⁷⁷ *John Doe 1, et al. v. Chiquita Brands International, Inc.*, C.A. No. 2:07-3406.

⁷⁸ *Juan Does 1-377, et al. v. Chiquita Brands International, Inc.*, C.A. No. 1:07-10300.

⁷⁹ *In re: Chiquita Brands International, Inc. Alien Tort Statue and Shareholders Derivative Litigation-* Transfer Order, 536 F.Supp.2d 371, U.S.Jud.Pan.Mult.Lit., 2008, February 20, 2008.

⁸⁰ The lawsuit was filed in a federal court in New York on 11 March 2008, by the family of five missionaries allegedly murdered by FARC. The plaintiffs argue that Chiquita's payment, as well as material support, contributed to the death of the missionaries.

actors, have a certain responsibility derived from the power they enjoy over the local population of the countries where they invest or do business. To what extent this *social* responsibility translates into a *legal* responsibility is a matter of great discussion among scholars but also an everyday struggle in national courts dealing with cases of corporate complicity in violations. The determination of to what extend standards of international law establishing the obligation to respect, protect and promote human rights are applicable not only to states but also to non-state actors is crucial to the search for accountability. A set of clear standards, enforceable in a court of law, either at national or international level, would provide a step further in the fight for the protection of human rights and the prevention of human suffering. Ad hoc solutions such as those provided by the ATCA are certainly important in terms of redress and deterrence but are necessarily limited by jurisdictional and other factors. The Colombian cases are just another example of the resourcefulness of victims and their lawyers in the face of frustrations and limitations inherent in the current international and national legal systems. These and the numerous other ongoing cases against corporations for their implication in human rights abuses highlight the important role that litigation plays in the continuous development of legal protections to guarantee justice for those victims of offences perpetrated against their dignity by corporations rather than states. But they also highlight the urgency of more adequate international legal solutions of one of the pressing human rights issues of our times.