

FOREIGN INVESTMENT-INDUCED
MIGRATION IN COLOMBIA: RETHINKING
THE LEGAL SCHEMES OF PROTECTION
AND ACCOUNTABILITY*

*LA MIGRACIÓN GENERADA POR ACTIVIDADES
DE INVERSIÓN EXTRANJERA EN COLOMBIA:
REPENSANDO LOS ESQUEMAS DE
PROTECCIÓN Y RESPONSABILIDAD*

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ABSTRACT

This paper intends to explore the relation between foreign investment and forced Migration in the context of Colombian armed conflict. Through the illustration of recent cases, it shows the various forms in which the operation of multinational corporations has generated adverse effects to the vulnerable communities located at their area of influence, thus generating processes of involuntary human mobility. In that way, it is established that there is a symbiotic relation between conflict and development, affecting the structure and scope of the norms for both the protection of forced migrants and accountability for human rights violations. This is so because there is an *economic interest* that constrains the recognition of the above-mentioned cases under such legal sphere.

Keywords author: Colombia, forced migration, foreign investment, human rights, armed conflict, internal displacement law, refugee law.

Keywords plus: Forced migration, migration-internal, investment-foreign, human rights, armed conflict, refugees, Colombia.

RESUMEN

Este artículo tiene como finalidad explorar la relación que existe entre las dinámicas de la inversión extranjera y la migración formada en el contexto del conflicto armado colombiano. Mediante la presentación de una serie de casos recientes, se muestran las diversas formas en que la operación de las empresas multinacionales ha generado efectos negativos a las comunidades vulnerables ubicadas en las zonas de influencia de esos proyectos, lo que implica procesos de movilidad humana involuntaria. En esa medida, se establece que hay una relación simbiótica entre el conflicto armado y el desarrollo, lo cual redundaría en la estructura de las normas de protección de migrantes y responsabilidad por violación de derechos humanos, que suelen desconocer este tipo de casos; esto se debe a que el interés económico es visto como un factor de progreso general, que constriñe su reconocimiento como un interés jurídico válido.

Palabras clave autor: Colombia, migración forzada, inversión extranjera, derechos humanos, conflicto armado, derecho de los desplazamientos internos, derecho de refugiados.

Palabras clave descriptores: Desplazamiento forzado, migración interna, inversiones extranjeras, derechos humanos, conflicto armado, refugiados, Colombia.

SUMMARY

I. INTRODUCTION.- II. INVESTMENT INDUCED MIGRATION: MODELS AND PATTERNS FROM THE COLOMBIAN CASE.- A. *Colombian Armed Conflict: Violence and Migration*. B. *The Paths of Investment-Induced Migration in Colombia*. 1. Migration as a consequence of the multinational corporation's operational scope under the context of a development strategy. 2. Migration as a strategic objective for the accumulation of land and resources.- III. WHY INVESTMENT-INDUCED MIGRATION SHOULD MATTER NOW IN THE CONTEXT OF HUMAN MOBILITY? A. *Revising the migration-development and conflict-development nexuses*. B. *Who requires protection and redress? The need to assume new epistemological and political approaches*. 1. The problem with definitions as determinants of protection. 2. How to regard forcefulness and violence? Excluded causalities and other demons.- IV. CONCLUSIONS: THE NEED TO ASSUME NEW EPISTEMOLOGICAL AND POLITICAL APPROACHES.- BIBLIOGRAPHY.

“War is an activity with economic orientation”

Max Weber, *Economie et société* (1921).

I. INTRODUCTION

In October 2011 an interdisciplinary group of both Canadian and Colombian scholars, activists and policymakers gathered at York University in Toronto with an overwhelming pretention. Attracted by the common aim to create a transnational and inter-disciplinary network, they were interested in the harsh task of untangling a complex set of phenomenon that had been around their diverse areas of expertise, which at some point started to appear as interconnected: *foreign investment and forced migration*.

In that order, the purpose of the workshop was to understand and address the relevant drivers of forced migration flows as critical to develop new research and policy responses to improve human rights implementation and human development. After a fruitful set of presentations and discussions, the main conclusion was that a significant number of trade and investment factors are linked to forced migration, including conflict over resources in the context of “*development*” activities such as mining, mono-culture farming and petroleum extraction¹.

This paper intends to continue with the foregoing discussion and explore the current challenges to the legal structures designed to protect forced migrants under a specific scenario: the insertion of transnational extractive economies in the global south². Therefore, it is mainly suggested that although there is a

1 See W. Payne & P. Ravecca, *Trade And Investment-Induced Population Displacement In Latin America: A Workshop Organized By The Centre For Research On Latin America And The Caribbean (CERLAC) And The Centre For Refugee Studies (CRS)*, 3 (CERLAC, Working Paper, 2012).

2 “*The global South comprises the post-colonial and predominantly poor countries of Africa, Caribbean- Pacific, Latin America and Asia – countries that despite their abundant natural resource endowments are associated with the greatest political and developmental setbacks and challenges in modern history: dictatorships and instability, weak institutional structures, corruption and misgovernance, human rights deficits, hunger and starvation, environmental*

causal relation between foreign investment and forced migration, extensive attention and action haven't been placed by regulatory authorities and policy-makers.

In order to develop such issue, Section I subtracts the above-mentioned link through the illustration and account of emblematic cases occurred in Colombia, a country with abundant natural resources that has been immersed into a social-rooted armed conflict for the last 50 years. Subsequently, Section II presents the way on which different spheres of *regulation*³ have approached the relation between conflict, development and migration, so as to illustrate how they haven't acknowledged *investment-induced* migration as a relevant case, so protection for the affected people by this situation and the accountability are not fully granted. Finally, *perspectives and conclusions* are suggested towards the revision of the current legal schemes associated with forced migration, so as to recognize and respond to intricate factual situations as the one accounted.

II. INVESTMENT-INDUCED MIGRATION: MODELS AND PATTERNS FROM THE COLOMBIAN CASE

A. Colombian armed conflict: violence and migration

If a country could talk about how violence and development have coupled themselves to impose a specific political and social environment, that one is Colombia. The country has been immersed into a long-range armed conflict for the last 50 years,

degradation, refugeeism and forced migration, widespread disease including HIV/AIDS pandemic, as well as high and low intensity conflicts". See K. Omeje, *Extractive Economies And Conflicts In The Global South: Re-Engaging Rentier Theory And Politics*, in *Extractive Economies And Conflicts In The Global South*, 1-25, 1 (K. Omeje, Ed., Ashgate, Burlington, 2008).

- 3 This term engages with a wide and inclusive vision of governance, on which the production of norms and policies is undertaken by a multiplicity of actors in a multi-level scheme (international, domestic, public, private, and so on). See extensively P. Zumbansen, *Neither Public Nor Private, National Nor International: Transnational Corporate Governance From A Legal Pluralist Perspective*, 6 CLPE Research Paper Series, 5, (2010).

in spite that *violence* has always been part of societal schemes of inter-relation⁴. The following are concrete data in order to understand the magnitude of the phenomenon⁵:

- 600.000 people killed under the confrontation between official army, guerrillas and paramilitary groups.
- More than 10.000 people affected by the use of land mines and other forbidden illegal war means and methods from 1990.
- 15.000 people have been forcibly disappeared over the last 30 years.
- Around 3.7 million internally displaced and obscure statistics about refugees.
- Over 1.7 million land hectares have been claimed to be restituted from illegal dispossession, under the framework of 23.000 formal procedures initiated by internally displaced persons before the Ministry of Agriculture.
- 26 billion pesos is the foreseen public budget for defense and security in 2013, which is more or less 3.5% of Colombia's GDP.

The conflict is firmly rooted on social inequalities and discriminatory schemes inherited from Colombia's colonial early history. In that order, a great variety of actors –official army, guerrillas, paramilitary groups, drug cartels just to mention the most visible– have been engaged in the constant dispute over valuable assets –land, natural resources, labor force– and their productive structures. This way, a vicious circle is traced: on the one hand, control over those resources is the *cause* of the strife,

4 For example, the early twentieth century's political violence produced 14.000 causalities by 1947 due to a *cacique* strategy for territorial control. Later on, events occurred as a consequence of the murder of the political leader Jorge Eliécer Gaitán, which generated strife all over the territory and about 3.000 killings.

5 See *Conflicto armado de Colombia en cifras*, Prensa Libre (Oct. 17, 2012). http://www.prensalibre.com/internacional/Colombia-conflicto-guerrilla-paz-Noruega-Cuba_0_793720729.html.

and on the other, they are used to *boost* the belligerent structures taking part on confrontation.

In view of the nature and objectives pursued by the mentioned actors, *forced migration*⁶ is a phenomenon that has been permanently associated to the dynamics of the conflict and consequently, it has been relevant to the legal structures aiming for the promotion and protection of human rights. Whereas at an initial stage of legal recognition, forced migration was shortly conceived as an armed conflict's regrettable consequence that had to be accounted for specific humanitarian issues, later on it became central to the human rights debate. This, because it was internalized that the threat or fact of displacement from one's home or land is clearly one of the major injustices that can be committed against a person, family, household or community⁷, so the scope of regulation should be enlarged to other areas such as prevention, protection and accountability.

In that sense and under the specific dynamics of the conflict, forced migration has been acknowledged twofold; on the one hand, as the consequence of a first phase of human rights violations, and on the other, as a fundamental violation of human rights itself. In general terms, the first path calls for the enactment of public policies and specific mechanisms to integrally assist people that had left the places of regular residence or activity, as well as full redress for their loss. The second one is associated to the right of *freedom of movement and circulation*, which includes the specific entitlement not to be compelled to mobilize⁸.

6 For the purposes of this article, the concept *forced migration* is going to be undertaken in a comprehensive way, including both internal displacement and migration across borders.

7 See R. Muggah, *Through The Developmentalist's Looking Glass: Conflict-Induced Displacement And Involuntary Resettlement In Colombia*, 13 *Journal of Refugee Studies*, 2, 133-135 (2000).

8 See V. Chetail, *Freedom Of Movement And Transnational Migrations: A Human Rights Perspective*, in *Migration And International Legal Norms*, 59 (A. Aleinikoff & V. Chetail, Ed., TCM Asser, The Hague, 2003).

B. The paths of investment-induced migration in Colombia

As it was affirmed in the previous section, forced migration has been associated to the dynamics of a social-rooted conflict like Colombia's, connection to which legal structures have approached through both the recognition of the phenomenon and the enactment of specific mechanisms for prevention, protection and accountability.

Therefore, in order to see whether such normative manifestations are comprehensive in understanding and layering the specificities of our study case, it is worthy to describe the paths of investment-induced migration in Colombia. This is so, because it is intuited that in this specific case, the logic on which the legal discourse is structured has several limitations that might affect the intention to both assist people affected by, and establish concrete accountability measures for the harms caused within such dynamic.

In occasion to his 2007 mission in Colombia, the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons commented that there was a general suspicion among IDPs that although their diaspora was originally caused by armed confrontation among the actors of the conflict, land appropriation by big enterprises was a collateral damage, if not a premeditated policy of dispossession to satisfy economic interests⁹. This might suggest two ideas that are as controversial as grave: first, that the insertion of a development model on a scenario of both conflict and vulnerability can produce forced migration; and second, that forced migration is not only a consequence of strife, but an objective itself in order to facilitate foreign investment's activity.

9 *"There is a widespread perception among displaced persons that there is no willingness to return land and other property to them and, in some regions of the country, they suspect that while displacement may originally have been caused by armed conflict, the taking over of their lands by large corporations is at least a side effect, if not part of a policy of forced displacement". See United Nations Human Rights Council, Report Of The Representative Of The Secretary-General On The Human Rights Of Internally Displaced Persons, Walter Kälin. A/HCR/4/38/Add.3, par. 53 (2007).*

In that regard, professor Ricardo Grispun has identified four primary and interconnected paths around the effects of investment activities in countries with extractive economies such as Colombia, according to which it can: 1) aggravate the conflict, 2) bring about economic losses, 3) accelerate loss of livelihoods by aggravating ecological conditions, and 4) impact on the policy space, reducing the range of policy strategies to assist vulnerable populations¹⁰. The question then is whether such elements can be verified in Colombia through specific cases.

1. Migration as a consequence of the multinational corporation's operational scope under the context of a development strategy

Colombia's political administration is centrally structured and owns a remarkable geopolitical tendency of *center-periphery*, which is projected not just in the demographic statistics, but in the way on which armed conflict is carried out. In that order, most of the military actions take place mainly in the rural area, popularly known as *la selva y el monte* (*the jungle and the mountain*). Consequently, populations living there are highly vulnerable because of the situation they have to face upon possible human rights violations. Whereas it is not surprising that such area contains the highest levels of poverty and social inequality because of the historical absence of official authority, it paradoxically is the region where most of available natural resources –fontes of wealthy such as oil, minerals, water and fertile land– are located.

Under this context, the arrival of extractive or infrastructure-oriented multinational enterprises¹¹ has to be seen as an

10 See W. Payne & P. Ravecca, *Trade And Investment-Induced Population Displacement In Latin America: A Workshop Organized By The Centre For Research On Latin America And The Caribbean (CERLAC) And The Centre For Refugee Studies (CRS)*, 14, Note 3 (CERLAC, Working Paper, 2012).

11 According to Brookings Institution, causes or categories of this kind of non-voluntary displacement include the following: water supply (dams, reservoirs, irrigation); urban infrastructure; transportation (roads, highways, canals); energy (mining, power plants, oil exploration and extraction, pipelines); agricultural expansion; parks and forest reserves;

additional risk. In this point, the situation fits into what has been addressed as *development-induced displacement*, which is seen as a process of forcing communities and individuals out of their homes, often also their homelands, for the purposes of economic development¹². As Omeje points out, another dimension of conflict amongst extractive economies is the one associated with the consequences of natural resource extraction for human livelihood, human settlement and the sustainability of the planetary ecosystem¹³.

Commonly, populations located at the zones of operation have a diverse ethnic and cultural origin, carrying out a complex set of implications. On the one hand, the ownership of beliefs, traditions and social practices that highlight a special relation with land and environment. And on the other, their consequent opposition to the neo-liberal model that such kind of economic scheme comprises, and that is pretended to be imposed through the argument of general progress for the country¹⁴.

Additionally, the situation aggravates due to the lack of implementation of sustainable measures coming from both the State and multinational corporations according to their obligations and possibilities. In that sense, the greatest example is the absence of *previous consultation* to the communities potentially affected with a project or extractive operation, before the

and population redistribution schemes. See C. Robinson, *Risks And Rights: The Causes, Consequences, And Challenges of Development-Induced Displacement*, 11 (Brookings Institution Occasional Paper, 2003).

- 12 It has to be pointed out that the case here described is not the one when involuntary displacement is done through a predisposed procedure and after previous consultation with communities, which accept a kind of resettlement for reasons of public interest. In that regard, Brooking institution has sustained that in 1997, the top 100 multinational corporations in the world employed 6 million people in their foreign affiliates, held \$1.8 trillion in foreign assets, and sold products valued at \$2.1 trillion in foreign markets. Thus, Private corporations often receive significant amounts of public money to finance construction of large infrastructure projects, which often involve the need to produce involuntary displacement and resettlement. See *Op.cit.*, 50.
- 13 See K. Omeje, *Extractive Economies And Conflicts In The Global South: Re-Engaging Rentier Theory And Politics*, in *Extractive Economies And Conflicts In The Global South*, 2, Note 4 (K. Omeje, Ed., Ashgate, Burlington, 2008).
- 14 See Corte Constitucional de Colombia. Sentencia C-608/2010 (M.P. Humberto Sierra Porto, 3 de agosto 2010).

starting of such entrepreneurship¹⁵. Thus, when collateral effects produced by unsustainable corporate operation are assembled with the original factors of social vulnerability associated with the armed conflict, forced migration flows can be produced. In this case, although there is absence of original positive intent to move, exacerbated exposure to risks produce that people to displace in order to escape from potential harms to their life and integrity.

Consequently, it is of the utmost importance to remark the *violent character* of this situation; although in this path no concrete belligerent action is verified, the conjunction of a conflictive environment with a dynamic of socio-cultural strife has to be seen as fierce and forceful. And, under the context of special vulnerability, it has to be reproachable¹⁶.

Notwithstanding the fact that this is a common situation under the context of Colombia, probably the case which has gotten the greatest visibility in the last years, as well as the most documented one, is the U'wa peoples' resistance to oil activities by Occidental Petroleum –a United States based extractive corporation–, in which both State and corporate interests were aligned in the execution of a large-scale land development project, particularly involving natural resource extraction in the Northeastern forests of the Colombian Andes¹⁷.

Aponte-Miranda perfectly depicts the specific socio-cultural conditions that made this indigenous people a vulnerable community by the time the project operation arrived to their lands:

15 See extensively C. Rodríguez-Garavito, *Ethnicity.Gov: Global Governance, Indigenous Peoples And The Right To Prior Consultation In Social Minefields*, 18 *Indiana Journal of Global Legal Studies*, 1, 263-305 (2011).

16 As it is suggested by influential *think tanks* such as Brookings Institution: “*Not only is development-induced displacement a widespread, and growing, phenomenon, but evidence suggests that while the beneficiaries of development are numerous, the costs are being borne disproportionately by the poorest and most marginalized populations*”. See W.C. Robinson, *Risks And Rights: The Causes, Consequences, And Challenges of Development-Induced Displacement*, 16, Note 16 (Brookings Institution Occasional Paper, 2003).

17 For a detailed analysis on this case and the possible ways to provide an effective scheme of accountability, see L. Aponte-Miranda, *Law, The U'wa And Occidental Petroleum: Searching For Corporate Accountability In Violations Of Indigenous Land Rights. Symposium: Lands, Liberties, and Legacies: Indigenous Peoples and International Law*, 31 *American Indian Law Review*, 2, 651-673 (2006-2007).

Presently, there are an estimated 5.000 members of the U'wa peoples that have survived the affronts of Spanish colonization and subsequent intrusions by external actors. According to U'wa cultural and religious beliefs, land is sacred and their peoples are charged with maintaining the equilibrium between the heavens and the earth. The U'wa believe that oil, or "riuirá," is the blood of Mother Earth, and therefore, that oil drilling on their lands represents the death of their Mother. These beliefs motivated a significant number of U'wa to resist Spanish colonization of their peoples and lands more than five hundred years ago through an orchestrated mass suicide¹⁸.

Despite of the community's objections on the project and an initial victory before the domestic judicial system¹⁹, Colombian Government granted licenses to Occidental Petroleum, so the exploration plans continued. In parallel, the community manifested fear that the oil project would bring political violence that has accompanied other oil pipelines under the actions carried out by guerrilla against both the institutional apparatus and foreign interests²⁰.

Under such situation, the risk to migrate in order to protect their integrity is considerable; the U'wa themselves argued that a similar background produced the forced migration of the *Guahibo people*, which were there after being located at various urban centers living as mendicants²¹.

2. Migration as an strategic objective for the accumulation of land and resources

The previous pathway illustrated how under Colombia's belligerent environment, migration has been produced as a consequence

¹⁸ See *Óp. cit.*, 655.

¹⁹ See extensively A. Gibson, *The Real Price Of Oil: Cultural Survival And The U'wa Of Colombia*, 12 *Colorado Journal of International Environmental Law and Policy*, 139-147 (2001).

²⁰ "Rebels target the pipelines 'as part of an extortion scheme and to protest foreign 'exploitation' of Colombia's resources. Guerillas have bombed the Caño Limón pipeline more than 600 times and, according to Ecopetrol, the Colombian government's state-owned petroleum company, the rebels have caused 2.3 million barrels of oil to seep into the ground". See A. Gibson, *Óp. cit.*, 140.

²¹ See A. Gibson, *The Real Price Of Oil: Cultural Survival And The U'wa Of Colombia*, 12 *Colorado Journal of International Environmental Law and Policy*, 142 (2001).

of the conjunction between an extractive model of development and a situation of accentuated vulnerability. Equally, it is possible to verify that in other cases human mobility has been conceived as an objective for the appropriation and accumulation of land and natural resources: *a systematic exercise of dispossession*. In that order, a multiplicity of factors are put together to articulate the dynamics of the conflict and its actors –paramilitary groups, guerrillas, official army and so on– with the economic interests of powerful actors such as multinational corporations.

The latter represents a process of violent acquisition of territory and resources, which has been conceptualized by Marxist geographer David Harvey as *accumulation by dispossession*²². Accordingly, the logic of the capitalistic process of primitive accumulation is reproduced within the cases of resource extraction at countries of the global south through the privatization and commodification of land, as well as the conversion of customary forms of land into exclusive property rights²³.

Once multinational corporations arrive to the zones of operation/conflict, they become a paramount actor of such peripheral society, so interaction between them and the other actors in play is unavoidable. In that regard, a *symbiotic interaction* is built around the type of capital/power, each part administers; on the one hand, a huge amount of resources, and on the other, monopoly over violence. In that way, it is not surprising to see why several studies have highlighted multinational corporations in Colombian departments such as Casanare, Arauca and Bolívar as agents of violence²⁴.

Although insurgent armed groups have traditionally obtained monetary resources for their operation through drug trafficking and kidnapping, day-by-day there is more contention from

22 See W. Payne & P. Ravecca, *Trade And Investment-Induced Population Displacement In Latin America: A Workshop Organized By The Centre For Research On Latin America And The Caribbean (CERLAC) And The Centre For Refugee Studies (CRS)*, 2, Note 3 (CERLAC, Working Paper, 2012).

23 See S. Elhawary, *Violent Paths To Peace? Rethinking The Conflict-Development Nexus In Colombia*, 67 *Colombia Internacional*, 88 (2008).

24 See N. Richani, *Multinational Corporations, Rentier Capitalism, And The War System In Colombia*, 47 *Latin American Politics & Society*, 3, 116 (2005).

the State and transnational actors against such illicit activities. Thus, the latter are not as profitable as they were in the past, so insurgency has an increasing need to find additional financing to preserve their existence and belligerent volume. Likewise, whereas the implementation of investor-protective domestic legislation has been used to legitimize the operation of multinational corporations, forced migration has been articulated as a complementary *de facto* mechanism to boost and consolidate such process, so only the ones that own the manipulation of violence are the ones who can produce it.

- Forced migration through the financing and supporting of the war system

Bearing in mind migration as an objective for the appropriation of territory and/or resources, multinational corporations have contributed to the financing and maintenance of the war system in several ways. According to documented confessions from former high-rank members before both domestic and U.S. jurisdiction –by virtue of their extradition to such country–, multinational corporations and specially oil companies were instrumental in the formation of right-wing paramilitary groups in the 1980's, especially in Puerto Boyacá, a town located in the Magdalena Medio region²⁵. Likewise, there is evidence of nexuses between multinational corporations and guerrilla groups:

On the one hand, multinational corporations accommodated and coexisted with guerrillas by satisfying their demands of social investment within the areas where those companies operated, taking into account the territorial coincidence among resources-location and conflict. In consequence, the insurgent

25 See extensively L.A. Fajardo, *Los mercaderes de la muerte en Colombia: multinacionales y derechos humanos*, 7 *Via Inveniendi et Iudicandi*, 13, (2010). http://numanterioresviei.usta.edu.co/index.php?option=com_content&view=article&id=103:los-mercaderes-de-la-muerte-en-colombia-multinacionales-y-derechos-humanos&catid=58:decimo-primeras&Itemid=146.

groups charged taxes and extracted protection rents, which were often paid by the companies²⁶.

On the other hand, multinational corporations provided a great part of the insurgent actor's income, so they had been able to recruit people, expand over territory and upgrade their armaments. This helped to establish a dangerous military balance between the parties at conflict, so the war system consolidated as a natural and even “*necessary*” dynamic in Colombia²⁷.

Thus, the seemingly contradictory strategies employed by foreign companies were obviously motivated by economic interests and appear to have worked, as their investments not only continued, but increased over the last two decades²⁸. In that way, a vicious circle is traced: on the one hand, control over those resources is the *cause* of the strife, and on the other, they are used to *boost* the belligerent structures taking part on confrontation.

- Forced migration through the direct exacerbation of conflict

In this first case, migration is seen as an objective for the appropriation of territory and/or resources, which are intrinsic to the operation of multinational corporations. Since control over land, labour, and natural resources is integral to the war and violence in Colombia, the past few decades have seen massive displacement and murder, which in the context of that economic model is beneficial to some economic sectors²⁹.

Colombian human rights authorities such as the Defensoría del Pueblo have reported that in several cases at the South Bolívar region—a zone with evidence of big gold deposits and

26 See S. Elhawary, *Violent Paths To Peace? Rethinking The Conflict-Development Nexus In Colombia*, 67 *Colombia Internacional*, 90, Note 25 (2008).

27 See N. Richani, *Multinational Corporations, Rentier Capitalism, And The War System In Colombia*, 47 *Latin American Politics & Society*, 3, 123, Note 26 (2005).

28 See *Op.cit.*, 125.

29 See W. Payne & P. Ravecca, *Trade And Investment-Induced Population Displacement In Latin America: A Workshop Organized By The Centre For Research On Latin America And The Caribbean (CERLAC) And The Centre For Refugee Studies (CRS)*, 2, Note 3 (CERLAC, Working Paper, 2012).

predominant spontaneous colonization— there is no evidence of a legal bound between people and lands or mines including the specific lack of documented property titles. Thus, armed groups take advantage of that situation to favor economic interests by displacing population, so lands and extractive spots get abandoned for future exploitation by multinational mining corporations³⁰.

The juxtaposition of forced displacement, concentration of the ownership of land, and presence of armed actors at the same region can't be considered fortuitous. Whereas it has been generally acknowledged by most international and domestic actors that the enforced displacement of civilian population is a deliberate war strategy employed by the armed forces, guerrillas and paramilitary groups, a clear convergence between the strategy of the latter and the interests of certain economic sectors is recently becoming more visible³¹.

In that way, a report produced in 2009 by Canadian NGOs Mining Watch and Inter Pares gave account that regions in which Canadian mining companies were active —rich in minerals and oil—, had been and continue to be plagued by violence, displacement, and paramilitary activities. Statistics contained by the same study show that resource-rich regions are the source of 87% of forced displacements, 82% of the violations of human rights and international humanitarian law, and 83% of murders of union leaders. That is the case of the Antioquia department, where the extractive multinationals Goldfields and B2Gold operate, and massive forced displacements were produced within their areas of intervention as a consequence of paramilitary action³².

30 See Defensoría del Pueblo Colombia, *Sistema de Alertas Tempranas*, Informe de riesgo N° 042-06 A.I., 6, Bogotá (20 de octubre, 2006).

31 See R. Muggah, *Through The Developmentalist's Looking Glass: Conflict-Induced Displacement And Involuntary Resettlement In Colombia*, 13 *Journal of Refugee Studies*, 2, 137, Note 9 (2000).

32 See extensively E. Roy-Grégoire, *Land And Conflict Resource Extraction, Human Rights And Corporate Social Responsibility: Canadian Companies In Colombia. Report Prepared By Mining Watch Canada And CENSAT-Agua Viva For Inter Pares*. (2009). http://www.interpares.ca/en/publications/pdf/Land_and_Conflict.pdf.

III. WHY INVESTMENT-INDUCED MIGRATION SHOULD MATTER *NOW* IN THE CONTEXT OF HUMAN MOBILITY?

A. Revising the migration-development and conflict-development nexuses

The so far referred cases of investment-induced migration are undeniably complex. They represent a specific path: an increasing collision between the intention to expand a neo-liberal economic model, and the pretention to place the individual at the center of regulatory constellation, i.e., the protection of human rights, being migration a scenario on which vulnerability is manifested.

Thus, in order to approach the current status of legal responses to investment-induced migration, such political/social struggle has to be regarded under the context of two global debates which have been undertaken by governments, inter-governmental institutions, international organizations and civil society: the *migration-development* and the *conflict-development* links. They are seen not just as encompassing common interests to the international community –in terms of International Law–, but as specific agendas of both discussion and intervention over phenomenon that are global because of the inclusion of a varied deck of actors.

The first one reproduces a substantial discussion on the relation between economic globalization and human mobility, widely formulated and carried out by both institutional and private actors under their radio of concern, but mostly from the *economic development arena*³³. This way, having traced an itinerary with a predominant influence of the neo-liberal discourse,

33 “The historical-structuralist paradigm sees migration as a flight from misery caused by global capitalist expansion, which is therefore inherently unable to resolve the structural conditions that cause migration. Quite on the contrary, migration is seen as aggravating problems of underdevelopment”. See H. De Haas, *Migration And Development: A Theoretical Perspective*, 44 *International Migration Review*, 1, 234 (2010).

one can identify a very distinguishable conceptualization: *that migration is beneficial for development*.

According to this view, migration has an important role both in redistributing income between rich and poor areas/countries and alleviating poverty since deprived households are able to diversify their incomes and ensure their survival. Thus, it follows that such dynamic provides a remarkable and unexpected increase in the revenues of developing countries or peripheral areas³⁴. Consequently, explanatory models of migration that spread from this conception are based on *economic forces* such as pull and push factors, rational decisions and incentives³⁵.

From this perspective, even though economic forces are seen as *natural* to human behavior, the management of migration has become a priority for global regulation and governance. Whereas migration has high implications for the improvement of development standards, it should be intervened through the issuance of norms and policies so as to count with ordered flows and predictable paths at that level³⁶. This way, the migrant is seen as both an agent of progress and fundamental for the enlargement of a transnational economic scheme.

While the latter representation doesn't regard on the causes producing the migratory phenomenon but simply associates positive economic outcomes to such dynamic (a *general-progress imaginary*), the second one –the conflict-development nexus– takes a way different direction: it does. Consequently, such discourse sustains that in some cases, violence and conflict can play an important role in shaping economic relations and structures that are embedded in the development process³⁷. If we consider violence as associated to the production of damages around vulnerability, then it is possible to affirm that under such

34 See N. Harris, *Migration And Development*, 40 *Economic and Political Weekly*, 43, 4591-4592 (2005).

35 See N. Nyberg-Sorensen *et. ál*, *The Migration-Development Nexus: Evidence And Policy Options*, 8, 13 (IOM, Migration Research Series, Geneva, 2002).

36 See *Op.cit.*,13.

37 See S. Elhawary, *Violent Paths To Peace? Rethinking The Conflict-Development Nexus In Colombia*, 67 *Colombia Internacional*, 94, Note 27 (2008).

circumstances *development can be prejudicial for human rights protection*³⁸.

Even if a primary view of the relation between violence and development –mainly associated to international financial institutions such as the World Bank– points to conceive the latter as a tool for conflict prevention and resolution of the former³⁹, others highlight that the logics behind the imposition of an economic model are not always peaceful. Therefore, it is argued that those two elements are not at extreme opposite poles along a linear continuum but can be interconnected by alternative dynamics associated with the expansion of a capitalist model⁴⁰.

Under this second insight, migration is seen as a mechanism for the concretion of a model of development due to its association to the dynamics of armed conflict, under which economic agents such as multinational corporations have specific interests over natural resources and play an important role in boosting violence, as documented in Section I. Going further on, it has to be affirmed that in a great number of cases, multinational corporations follow a strategy of contribution to war system maintenance and dynamics in an attempt to consolidate their presence and protect their long-term investment plans⁴¹.

Now, the juxtaposition of these two political debates permits to reveal a fundamental issue around the way on which Law currently articulates foreign investment and migration. So on, when human mobility is predominantly seen as a tool for economic

38 Following Elhawary, it is important to state that this affirmation doesn't extend to the whole development process, but that violent conflict can shape the development process. See *Op.cit.*, 94.

39 "Why should the World Bank focus on civil war? Basically, there are two reasons. First, civil war has devastating consequences: it is development in reverse. As civil wars have accumulated and persisted, they have generated or intensified a significant part of the global poverty problem that is the World Bank's core mission to confront. (...) The second one reason why the World Bank should focus on civil war is that development can be an effective instrument for conflict prevention". See World Bank, *Breaking The Conflict Trap: Civil War and Development Policy*, ix (World Bank & OUP, Washington, 2003). Likewise, see extensively: <http://blogs.worldbank.org/conflict/>.

40 See S. Elhawary, *Violent Paths To Peace? Rethinking The Conflict-Development Nexus In Colombia*, 67 *Colombia Internacional*, 86, Note 28 (2008).

41 See N. Richani, *Multinational Corporations, Rentier Capitalism, And The War System In Colombia*, 47 *Latin American Politics & Society*, 3, 124, Note 29 (2005).

progress, causality becomes external to the understanding of the phenomenon and consequently alien to any regulatory process, including law making and decision-making.

Consequently, any consideration on the articulation between a development strategy and an ongoing conflict is detached from the scenario of human mobility governance. This leads to a normative reality on which specific situations such as investment-induced migration are disconnected from the spectrum of legal protection and accountability, because at the end, the migrants' situation simply does not exist before the eyes of the authority in charge of those prerogatives/mechanisms.

In concrete, under the current state of the legal apparatus most of the people affected by migration are not “*eligible*” for either *protection* and/or *accountability*. This is so because norms are designed in a way that, on the one hand, they privilege a neo-liberal view of migrants as economic agents, and on the other, they are configured to consider a very narrow set of situations on which human mobility is not contextualized by the dispute of an economic interest.

Hence, the following inquiry to examine is whether governance insufficiently highlights the human rights dimensions embedded in development-caused migration under the context of foreign investment, represented by multinational corporations. When it is clear that under circumstances of conflict and social vulnerability certain development schemes –including foreign investment– can inherently pose risks to the life and dignity of affected people, or even sponsor violent actions in which migration/dispossession is seen as a vehicle to accumulate commodities⁴².

42 See M. Cernea, *Development-Induced And Conflict-Induced Idps: Bridging The Research Divide*, 26 *Forced Migration Review. Special Issue*, 26 (2006).

B. Who requires protection and redress? The need to assume new epistemological and political approaches

Having analyzed the ideological constructions *migration-development* and *conflict-development*, it is now arguable that the way in which the global actors have acknowledged the migratory phenomenon determines its legal recognition. This is a process embedded in the use of specific argumentative artifacts that reproduce an ideological conception into the logics of the legal discourse.

Thus, a look at the content and scope of the norms by virtue of which protection is granted to migrants will be helpful to understand how the lack of causality beyond economic utilitarianism, as well as the obliviousness of specific contexts, provoked the construction of a normative system with a limited scope of protection and accountability. The latter is determinant to answer further questions over the system's sufficiency to protect the human rights of migrants affected by the display of the *conflict-development-migration* chain.

It is important to remind that as underlined in Section I, this paper assumes migration in a wide sense –i.e., not restricted by a reference to political territoriality or border-crossing–, so this part will refer to both international and domestic legal norms on the protection of people that require it, no matter the existence of an economic element around mobility, considering the argument previously construed.

1. The problem with definitions as determinants of protection

The logic behind definitions as *entrance doors* to protection is perhaps the most common way of rights-attribution in modern legal systems⁴³. It comes from the very notions of nationality and citizenship, corresponding to the assumption according to which

43 See extensively F. Macagno, *Definitions In Law*, 2 *Bulletin Suisse de Linguistique Appliquée*, 199-217 (2010). <http://ssrn.com/abstract=1742946>.

identities are constitutive of entitlements, so the ones who don't share such distinctiveness are excluded from their enjoyment. In the case of the protection of migrants, they are considered subjects of special protection, according to a specific situation of vulnerability.

In that way, Article 1 (A) 2 of the 1951 Refugee Convention⁴⁴ states that a “*refugee*” is any person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Following the same direction, Colombia's Law 387/97⁴⁵ defines its subject of concern:

A displaced person is any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order.

It is paradoxical that a scheme of rights-attribution coming from a situation of manifest vulnerability –the application of a redistributive concept of justice–is done through an argumentative scheme of subsumption, by virtue of which an *object* is included onto the extension of another object. Consequently, it is difficult to contextualize specific situations on which conflict shapes social relations, and so balance colliding interests such as

44 Convention Relating to the Status of Refugees, Geneva, 1951.

45 Ley 387 de 1997. Por la cual se adoptan medidas para la prevención del desplazamiento forzado; la atención, protección, consolidación y estabilización socioeconómica de los desplazados internos por la violencia en la República de Colombia. Jul. 18, 1997. DO. No. 43091.

the expansion of a development model *vis à vis* the protection of multicultural manifestations and alternative ways of conceiving natural resources.

One could condense this process through two junctures. On the one hand, if a person fits into the specific definition of *refugee or internally displaced person*, protection is granted from the understanding and symbolic account of the *forced* and *violent* nature of the circumstances that produced migration. On the other hand, if his condition does not fit into the legal characterization, he is regarded outside such specific spectrum so no entitlements related to protection are attributed.

In that order, when located into the discourse of the *migration-development nexus*, the person that doesn't fit within the normative definition is regarded as an *economic migrant*, who is perceived as an individual who peacefully and voluntarily decided to mobilize in order to find better life standards and increase his income level, so as to redistribute to the others left behind. Consequently, forcefulness and violence are absent from the case assessment and no protection of the sort to refugees or internally displaced is given, since there is no juridical interest of that kind to be sheltered.

2. How to regard forcefulness and violence? Excluded causalities and other demons

According to the latter construction, it is manifest that *forcefulness* and *violence* are fundamental elements for the attribution of protection in both regulatory schemes; as the former refers to the absence of a conscious intend to mobilize, the latter relates to the way on which the dynamic is produced. In that order, it is necessary to articulate such elements with the specific cases of investment-induced migration so as to see whether protection could be granted, keeping in mind the ideological framework construed in Section II (1).

Regarding the 1951 Convention's definition of refugee, one can see that the term *well-founded fear from persecution* is the key

element of the description, because it refers to both force and violence as determinants to mobilization⁴⁶; whereas *fear* implies an alteration of free will to proceed in such a way, *persecution* suggests a direct, fierce and disproportionate action. Such situation is circumscribed to a specific set of reasons –race, religion, nationality, and membership of a particular social group or political opinion–, valued by the law-maker as the ones under which protection is justifiable. As UNHCR has pointed out, by indicating a specific motive, the definition automatically makes all other reasons for escape irrelevant⁴⁷.

More comprehensive and objective-oriented is the definition contained by Law 387/97. First, it associates *forcefulness* with the need to protect specific juridical interests that have been either threatened or violated –life, physical integrity, personal freedom or safety–, elements, which are associated to the consolidation of the human rights discourse. Likewise, it recognizes armed conflict and other forms of *violence* as primary scenarios under which displacement occurs in Colombia, so it contextualizes the intent to offer protection.

The challenge now is to assess whether the nature of investment-induced migration would fit within such legal constructions and more specifically, correspond to the way on which forcefulness and violence are here presented, taking into account the particularities of the Colombian cases.

- Legal protection when migration is a consequence of the multinational corporation's operational scope

In the first type of cases the element *violence* is not very clear since a concrete belligerent action can't be verified. Nevertheless, one could argue that the conjunction of circumstances through which populations have to go through is fierce itself: a conflictive

46 As the UNHCR's *Handbook on procedures and criteria for determining refugee status under the 1951 Refugee Convention* states, "the term 'well-founded fear' therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration". See HCR/IP/4/Eng/REV.1, par. 37 (1992).

47 *Op.cit.*, par. 39, Note 50.

environment along with the absence of State authority can generate a situation of accentuated vulnerability with proclivity to involuntary migration⁴⁸. In that regard, UNHCR's interpretation to the 1951 Convention is that in some cases individuals may have been subjected to measures not in themselves amounting to persecution and combined with other adverse background factors, so the various elements involved, if taken together, may produce fear from persecution on *cumulative grounds* as a kind of discriminative pattern⁴⁹. Nevertheless, the possibility to obtain protection via both Refugee Law and Domestic Regulation on internal displacements seems problematic.

In the case of Refugee Law, although it is possible to verify a subjective prevention from the population –fear–, the reasons, which appear relevant for the legal apparatus to extend protection, are very narrow. Thus, it is hard to imagine how adverse effects from the implementation of a development strategy or even more concretely, from the operation of multinational corporations, could be associated to race, religion, nationality, membership of a particular social group or political opinion.

On the other hand, in the case of Colombian domestic normativity, it would be possible to verify the objective affectation or threat to a person's physical integrity or safety, as required by the definition of internal displacement. Nevertheless, the possibility to frame such affectation on the background of an armed conflict, massive human rights violations or a situation contrary to public order is vague. This is so because of the complex nature of the dynamic through which vulnerability is produced, on which it is the conjuncture of circumstances—including the multinational corporation's operation—the dynamic that produces collateral effects to population.

- Legal accountability when migration is an strategic objective for the accumulation of land and resources

48 UHCR, HCR/IP/4/Eng/REV.1, Section I (2) (a) (1992).

49 *Op.cit.*, 53-54, Note 50.

In this type of cases it is clearer that migration was produced through a violent scheme, so the protection schemes may be accessed in a more efficient way than the previous situations. Nevertheless, the problem here lies around another element related with the regulation of investment-induced migration: *accountability and redress*.

As IOM has pointed out, conflict and human rights abuse associated with poor governance have become among the key factors impelling much current migration, so the combination of circumstances create difficulties in keep affirming that there is a clear distinction between voluntary and forced migration⁵⁰. Hence, although it is clear that multinational corporations have caused negative impacts through their operation –including forced migration–, and that consequently they should be held accountable for it, it is not clear which is the content and extent of such action.

Moreover, on the condition that corporations are powerful economic actors that are increasingly gaining independence from the State, they have been developing a concept of *accountability* based on entrepreneurial autonomy and power holding. In that order, its main purpose is to control the behavior of multinational corporations through *codes of conduct*. Thus, the level of regulation is commonly low, shaped through standardization and commonly self-provided –what has been appealed as Corporate Social Responsibility–, which is contrary to an idea of full redress that, in the context of post-conflict justice, should include *justice, truth and full compensation*.

In other words, law –as the product of a very distinguishable process of policy-making– is designed to detach any consideration of force and violence from the spectrum of development, including foreign investment's sphere of influence. In that order, the normative packages are displayed through constricted definitions on which an individual has to fit in order to gain access to the humanitarian system and obtain full redress.

50 See N. Nyberg-Sorensen *et. ál.*, *The Migration-Development Nexus: Evidence And Policy Options*, 8, 15, Note 37 (IOM, Migration Research Series, Geneva, 2002).

IV. CONCLUSIONS: THE NEED TO ASSUME NEW EPISTEMOLOGICAL AND POLITICAL APPROACHES

This paper intended to explore the relation between foreign investment and forced Migration in the context of Colombian armed conflict. Through the illustration of recent cases occurred in the sphere of such economic-rooted confrontation, it pretended to show the various forms in which the operation of multinational corporations has generated adverse effects to the vulnerable communities located at their area of influence, thus generating processes of involuntary human mobility.

In that way, it was found out that there is a symbiotic relation between conflict and development, which clearly affects the structure and scope of the norms for both the protection of forced migrants and accountability for human rights violations. This is so because there is an *economic interest* that constrains the recognition of the above-mentioned cases under such legal sphere. The latter is nothing but one of the depictions of how difficult is to separate forced migration from conflicts over property and territorial expansion, on which armed actors and multinational corporations take part of, and peasants are seen as an obstacle for commercial interests⁵¹.

In that way, Caritas Europa has sustained that although migration has been seen as a response to the dynamics of development and a facilitator of social and economic change, it is equally important to address that the root causes of forced migration include situations associated with such economic scheme such as poverty, corruption, environmental degradation and lack of democracy⁵², which can be even more complex in the context of an armed conflict.

What has to be further studied and discussed is the following:

51 See J. Soledad, *Las migraciones forzadas: el desplazamiento interno en Colombia*, 41 *Cuadernos Geográficos*, 186 (2007).

52 See Caritas Europa, *A Reflection On The Dynamics Between Migration And Development. Reflection Paper*, 29-32. <http://www.caritas-europa.org/module/FileLib/CaritasEuropaReflectionPaperonMigrationandDevelopment-Feb2010.pdf>. (Feb., 2010).

- How do we think about forced migration –and specially people’s protection and redress– under the framework of extractive economies in the global south?
- What happens when a global development strategy is inserted into a country with social struggle and conflict (vulnerability)?
- How the current legal mechanisms for the protection and compensation of migrants –considered as subjects of human rights violations and entitlement-holders– should be adapted, looking forward a more comprehensive understanding of the particularities of migration at the Global South, and a more effective response to their needs?
- Is it possible to imagine and project a scheme of corporate accountability in the context of Colombia, specially framed around a post-conflict justice scheme?

Following the important conclusions reached by the 2011 Toronto Workshop, there is a need to reconceptualize forced migration including its causes, knowledge gaps and official denial of its existence, especially in relation to investment projects, including the fundamental recognition by means of which development policies based on unregulated investment contribute to forced migration and other human rights violations at the region⁵³.

53 See W. Payne & P. Ravecca, *Trade And Investment-Induced Population Displacement In Latin America: A Workshop Organized By The Centre For Research On Latin America And The Caribbean (CERLAC) And The Centre For Refugee Studies (CRS)*, 5, Note 3 (CERLAC, Working Paper, 2012).

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