

THE ROLE OF BUSINESSES IN A THRIVING SOCIETY

EL ROL DE LOS NEGOCIOS EN UNA SOCIEDAD PRÓSPERA

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Abstract

This article argues that human societies can thrive if they are able to promote a virtuous circle of human rights, respect, human development, and peace. These goals are interdependent. Therefore, neither of them can be achieved without the other two. Businesses play a crucial role in this process through their economic activity, which contributes or impedes the achievement of each of the components of the virtuous circle. Accordingly, governments should legally require businesses to respect human rights and implement legal mechanisms to remedy corporate abuses; (2) design foreign investment protection and trade regulations that allow governments to have enough freedom to pursue social interests even in detriment of foreign investors; and; (3) promote a system of incentives for businesses to act severally.

Key Words

Human rights, human development, businesses, peace, common good.

Resumen

Este artículo argumenta que las sociedades humanas pueden prosperar si logran promover un círculo virtuoso entre el respeto de los derechos humanos, el desarrollo humano, y la paz. Estos objetivos son interdependientes. Por lo tanto, ninguno de ellos puede ser alcanzado sin los otros dos. Las empresas juegan un rol crucial en este proceso a través de su actividad económica, que puede contribuir o impedir el logro de cada uno de los componentes del círculo virtuoso. En este orden de ideas, los estados deben requerir legalmente a las empresas que respeten los derechos humanos e implementar mecanismos legales para remediar los abusos

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corporativos; (2) diseñar normas de protección de la inversión extranjera y del comercio que garanticen suficiente libertad a los estados para perseguir intereses sociales, aunque estos vayan en detrimento de los inversores extranjeros; y (3) promover un sistema de incentivos para que las empresas actúen solidariamente.

Palabras Clave

Derechos humanos, desarrollo humano, empresas, paz, bien común

Summary: 1. Introduction. 2. The Virtuous Circle: human rights, development and peace. 3. The Virtuous Circle and Businesses. 4. Conclusion

1. INTRODUCTION

Until recently, literature has largely neglected the impact of business entities on individuals human rights. Similarly, the critical role of business entities² in sustaining conflict or building peace has not been sufficiently studied. Far from peripheral, businesses are crucial actors in the construction of the common good of our political communities, and their relevance is made even more apparent in moments of significant vulnerability such as post-conflict situations or transitional scenarios.

This article explores the crucial role of the business sector in the construction of a thriving society. The article argues that only through a virtuous circle of human rights respect, integral development, and peacebuilding, societies can thrive. Businesses play a crucial role in this process through their economic activity, which contributes or impedes the achievement of each of the components of the virtuous circle. Business entities can impact positively or negatively on almost all human rights recognized in international human rights law, such as the right to work, food, clothing, and the freedoms of speech, association, and conscience. Similarly, businesses are creators of wealth and channels of foreign indirect investment necessary for the economic development of our societies. Furthermore, businesses can contribute to the continuation of social conflict and violence, but they can be critical players in the reconstruction of societies destroyed by war. Accordingly, governments must take into consideration the role of businesses in the achievement of the common good of our countries, and be strategic in the way they regulate businesses in order to incentivize and require them to act in solidarity for the common good.

The first section explains the interdependence of human rights, development, and peace, which can become a virtuous or a vicious circle depending on the action of the various actors that take in part in it. The second section argues that businesses

²Although the word corporations refer to a specific form of business association, it will be used interchangeably with business entities or businesses.

play an essential part in this process through their economic activity and their political and social impact. Whether the role businesses play in society is positive or negative, partially depends on the norms that regulate them, but also, of the capacity of business leaders to act ethically.

2. THE VIRTUOUS CIRCLE: HUMAN RIGHTS, DEVELOPMENT, AND PEACE

This section explains a prescriptive framework to understand the conditions necessary for a thriving society. The framework is composed of three interrelated concepts: human rights, development, and peace. In the current literature, there is little to no debate on the existence of any relationship between peace, development, and human rights, and lack of clarity about the nature of this relationship. The respect and guarantee of human rights, the promotion of integral human development, and peacebuilding actions form a virtuous circle that leads to a flourishing society. These goals are interdependent. Therefore, neither of them can be achieved without the other two.

That interdependence places the business sector in the center of the cycle. Because of their power and the role businesses fulfill in society, they can stand in the way or contribute to the achievement of peace, in promoting development or underdevelopment, and in promoting human rights or in violating them. The following sections explore the relationship between human rights and development, human rights and peace, and development and peace.

2.1 Human Rights and Development

In the last decades of the twentieth century, the concept of development has changed from a narrower focus on economic growth to a human development approach. The evolution explains the change in the understanding of the meaning of well-being. In the initial years of research, development was understood in a strictly economic sense as the growth per capita real income. The per capita real income was considered as an instrument in attaining the different objectives of life and as an objective in itself as an index of "aggregate preference satisfaction"³ An example of this thinking can be found in Arthur Lewis' 1955 publication, *The Theory of Economic Growth*. Lewis, one of the leading development economists, argued

³." Lewis, W. Arthur. *The Theory of Economic Growth* 9-10 (London: Allen & Unwin, 1955); See also, Sengupta Arjun. *The Human Right to Development, in Development as a Human Right: Legal, Political, and Economic Dimensions* 13, 17 (Bård-Anders Andreassen, and Stephen P Marks eds., Harvard University Press, 2006).

that growth GNP was the objective of development because it "gives man greater control over his environment and thereby increases his freedom"⁴.

In the second stage of development thinking, GNP growth was found not sufficient to secure certain minimum living conditions. Consequently, the economic growth function was extended to include some indicators of basic needs.⁵ The development policy and programs that were aimed to accelerate economic growth of per capita income were supplemented with measures for income redistribution and for increasing the provisions of basic needs.⁶ As a further extension of the basic needs approach, the human development approach was proposed by switching the indicators of basic needs from commodities to achievements such as "life expectancy, infant survival, and adult literacy supplementing the indicator of per capita real income."⁷

The human development model is the result of the influence of the capability approach led by the Nobel Prize winner, Amartya Sen.⁸ Sen describes development as "a person's freedom to choose between different ways of livings."⁹ In Sen's terms, the freedom to pursue various lifestyles is the capability or capabilities of that person to transform different goods or resources into real "beings or doings" that are objectively valuable.¹⁰ On the other hand, the notion of "combinations of functions" represents the different life-styles people might pursue. The concept of "functions" transforms human development indicators from commodities into "doings or begins" that are valuable to people.¹¹

The relationship between development and human rights is a third stage in the understanding of development that is only a recognition of the inherent interdependence between these two concepts. From a historical perspective, the relationship between human rights and development can be traced to the adoption of the Universal Declaration of Human Rights in 1948 (UDHR) when the drafters of the Declaration discussed the importance of pursuing the conditions necessary for the development of every person in a society.¹² However, from a theoretical perspective, the interdependence of the two concepts has been present from the inception of the notion of development. Indeed, human rights are those goods that constitute the flourishing of human beings in the community, and the purpose of human development is precisely human flourishing.

⁴ Lewis, *Op. Cit.* Pag 420-42.

⁵ Sengupta, *Op. Cit.* Pag 37, at 17.

⁶ Loc. Cit.

⁷ Loc. Cit.

⁸ Sen Amartya, *Development as Freedom* (Random House Inc. 1999).

⁹ Sen Amartya, *Development as capability expansion*, *Journal of Development Planning* (1989) 41-58.

¹⁰ Sen, Amartya, *Op. Cit.*, 42, at 76-77.

¹¹ *Ibid.* at 75.

¹² Glendon, Mary Ann, *A World Made New* (Random House Inc. 2002) at 185-190. See also Universal Declaration of Human Rights, G.A. Res. 217 (II) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). para. 2 and 4.

An excellent example of the inherent logic of human rights in development can be seen in a statement of the former High Commissioner of Human Rights, Mary Robison. At a conference in 2000, she affirmed that: "Poverty eradication without empowerment is unsustainable. Social integration without minority rights is unimaginable. Gender equality without women's rights is illusory. Full employment without workers' rights may be no more than a promise of sweatshops, exploitation, and slavery. The logic of human rights in development is inescapable."¹³ Robison expressed it clearly. The relationship between development and human rights cannot be dismissed or overlooked, either from a historical perspective or a substantive analysis.

Nevertheless, the debate on the relationship between development and human rights, in both the development and the human rights literature, focuses on three questions: is development a condition to enjoy human rights? Does the fulfillment of recognized human rights constitute development? Furthermore, is development a subset of the list of human rights?

Scholars propose three different but not incompatible positions about the relationship between the two concepts. The first approach has been called the human rights-based approach to development. The human rights-based approach, in general, is a way of integrating human rights principles with institutional processes. One of those processes is development.¹⁴ According to the Independent Expert appointed by the Human Rights Commission on the Right to Development, Arjun Sengupta:

The human rights approach to development added a further dimension to development thinking. While the human development approach aims at realizing individuals' freedoms by enhancing their capabilities the goal of development policy, the human rights approach focuses on claims that individuals have on the conduct of the State and other agents to secure their capabilities and freedoms.¹⁵

The human rights-based approach integrates principles and standards of international human rights law into the process of development, such as universality, non-discrimination, interdependence, and indivisibility, accountability, inclusion.¹⁶

¹³Robinson, Mary, et al., *A Voice for Human Rights* (Kevin Boyle ed., University of Pennsylvania Press 2005). At 267.

¹⁴Kirkemann, Jakob, Hans-Otto Sano, *The Implication and Value Added of a Human Rights-Based Approach, in Development as a Human Right: Legal, Political, and Economic Dimensions* (Bård-Anders Andreassen, and Stephen P Marks eds., Harvard University Press, 2006) at 45, 45-46.

¹⁵ Commission on Human Rights, Open-Ended Working Group on the Right to Development Fourth Report of the Independent Expert on the Right to Development, Arjun Sengupta, submitted in accordance with the Committee Resolution 20001/9, UN Doc. E/CN.4/2002/WG18.2 (December 20, 2001).

¹⁶Kirkemann, Jakob, Hans-Otto Sano, *Op. Cit.*, 48, at 49.

Accordingly, this first approach advocates a notion of human development firmly based on capabilities *within a framework* of human rights standards and principles.

The value of this approach is that it transforms development into a matter of justice, and not only of charity, and thus gives legal force to the development-recipients' claims. Moreover, it states that development programs and aid provided by states and international agencies are performed according to human rights standards, such as non-discrimination, thus, excluding development paths contrary to human rights.¹⁷ In the human-rights approach to development, human rights are *instruments* for development, serving as guiding principles of the process and as criteria for selecting or dismissing pathways to development.

The second position regarding the relationship between human rights and development goes beyond the mere integration of principles of human rights into the process of development; it redefines the objective of development according to human rights obligations.¹⁸ Furthermore, in this second approach, human rights constitute the very objectives of the process of development because human being's capabilities and freedom are claimed and recognized as human rights. Within this framework, "the well-being function can then be represented by indicators of the different rights properly designed," which also include "the level per capita real income as an indicator of other development objectives not reflected in rights and standards of living in general."¹⁹ The main feature of this approach is that capabilities are understood as human rights, and thus exercising rights is being capable.²⁰ Therefore, development is the actual realization of human rights.

The third approach to the dichotomy between human rights and development defines development as a right itself. The human right to development was first recognized by the international community in the Declaration on the Right to Development adopted by the United Nations in 1986. Later in 1993, the International community again affirmed the right to development as a human right in the Vienna Second UN World Conference on Human Rights, and it has been further reiterated by almost every international conference since then.²¹

Despite the wide recognition of the development as a right in the international sphere, there is no hard law that affirms and makes the right operational. Moreover, the content of the right is still locked in an ongoing process of debate and construction. According to the Independent Expert on the Right to Development, Arjun Sengupta, the right to development can be defined as follows:

¹⁷ *Ibid.* at 68-69.

¹⁸ *Ibid.* at 52.

¹⁹ Sengupta, *Op. Cit.*, 37, at 18.

²⁰ Nussbaum, Martha C. *Capabilities and Human Rights*, in *The Philosophy of Human Rights* (Patrick Hayden, ed. Paragon House, 2001) 212- 217.

²¹ Sengupta, *Op. Cit.*, 37, at 13-14.

The right to development is the right to a process of development, consisting of a progressive and phased realization of all the recognized human rights, such as civil and political rights, and economic, social and cultural rights (and other rights admitted by international law) as well as a process of economic growth consistent with human right standards.²²

Consequently, Sengupta argues that the right to development is a vector of all the human rights recognized by international law whose value increases if at least one right is promoted and no right is violated or deteriorated. Economic growth is included in this definition because the duty to respect, protect, and fulfill human rights invariably requires sustained resources (goods, services, and institutions), as a state only brought about from *economic growth*. Although rights-based economic growth with justice and equality is intrinsically good and desirable, the role of economic growth in the right to development is *instrumental*.²³

Despite the differences, the three approaches refer to development as a process in which all human rights are progressively achieved, and where the process itself is conducted accordingly to human rights (participatory, non-discriminatory, transparent and accountable).²⁴ Additionally, in all three approaches economic growth is an element of development, whether it is instrumental or intrinsically important to the process. Despite the position taken regarding the relationship between development and human rights, the point here is that a process of development in which the human being is at the center must integrate human rights. Development without human rights leads to increased economic inequality and narrowly circumscribes measurements of the progress of a country to the mere numbers of the GDP, not day by day living conditions of its citizens.

2.2 Human Rights and Peace

There is much said about the relationship between human rights and peace. An extensive overview of this vast literature exceeds our purpose here.²⁵ However, four forms of interactions encompass the various ways in which it is argued that human rights and peace are intertwined: 1) war and armed conflicts cause human rights

²² *Ibíd.* at 20.

²³ *Ibíd.* at 25.

²⁴ Andreassen Bård-Anders, Stephen P Marks, *Development as a Human Right: Legal, Political, and Economic Dimensions 3* (Harvard University Press, 2006).

²⁵ Chen, Goh Bee, Baden Offord, *Activating Human Rights and Peace: Theories, Practices and Contexts* (Baden Offord et al. eds., Ashgate Publishing 2012); Bell, Christine, *Peace Agreements and Human Rights* (Oxford University Press, USA 2004); L.J. Laplante, *Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework*, 2 *International Journal of Transitional Justice* (2008). 331.

violations; 2) human rights violations produce social unrest and conflict, and works as a justification for armed intervention in other states; 3) strict human rights standards pose challenges to reach peace agreements, but impunity for human rights violations opens the possibility for new conflicts; and, 4) human rights is the language of peace.

The first level is a practical and almost evident phenomenon observable in any armed conflict: where there is war, gross human rights violations occur. Armed conflicts often produce forced disappearances, internal displacement, and unlawful restrictions to fundamental freedom, the killing of civilians and destruction of civilian infrastructure, and contamination of the environment, among many other human rights violations. In Colombia, the armed conflict has caused the death of 218,094 people (between 1958 and 2012), 27,030 people have kidnapped, and 25,007 have been disappeared (between 1985 and 2012).²⁶ Furthermore, the armed conflict has placed Colombia in the top ten of countries with most internal displacements in the world after countries such as Afghanistan, Iraq, and Somalia, with 5,712,506 displaced victims.²⁷

On a second level, human right abuses diminish peace both within a country and in the international sphere making the relationship between peace and human rights reciprocal or circular. In a country or political community, human rights violations produce social unrest and conflict, in particular, when political rights are violated, and the democratic means to ventilate social conflicts are neglected. Underneath this argument rests the idea that socio-economic and other human rights violations are at the root of armed conflicts. Even if its not leading cause it is one of the factors that incite them. In this regard, the preamble of the UN Declaration of Human Rights recognizes that "it is essential if a man is not able to have recourse, as a last resort, to rebel against tyranny and oppression, that human rights should be protected by the rule of law".²⁸ Consequently, it is argued that peace agreements that do not contemplate solutions to the human rights violations that are at the root of the conflict cannot reach long term peace.²⁹ The argument here is not that human rights violations provide a moral justification for taking the arms or inciting violence in any form. The argument is about the recognition of a real relationship between injustice and social conflict.³⁰

Similarly, but less relevant for our purpose here, in the international sphere, human rights violations have become one of the justifications for armed interventions in a

²⁶Centro Nacional de Memoria Histórica, *¡Basta Ya! Colombia: memorias de guerra y dignidad*, Centro de Memoria Nacional de memoria Histórica, (Last visited November 30, 2019) <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/estadisticas.html>

²⁷ U.N Council on Human Rights, *Global Trends Report 2012* (July 19, 2013) http://unhcr.org/globaltrendsjune2013/#_ga=1.174560683.823653354.1437683188

²⁸ Universal Declaration of Human Rights, *supra* note 46, preamble, para.3.

²⁹ Laplante, *Op. Cit.*, 59, at 333-34

³⁰ *Ibid.* at 347-49.

foreign state because of the international “responsibility to protect”. According to the International Commission on Intervention and State Sovereignty, responsibility to protect refers to “the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation—but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”³¹ Using this doctrine, states have intervened in other nations in order to help to stabilize chaotic social and political situations. The relevant point here is that the unwillingness or incapacity to protect human rights becomes a justification for using force in the international sphere. There is much debate about the responsibility to protect and its uses in contemporary international law, but that is beyond our scope here.³²

The third level of interaction between peace and human rights is often of tension or opposition during peace processes. The tension is due to what seems different objectives between peace negotiations and human rights law. While human rights law demands accountability for violations, a peace process seeks to end the conflict, which can only be done as a result of reciprocal concessions between the two sides. It is unlikely that an armed group would agree to give up the arms in order to go to jail for an extended period. Thus, the challenge becomes to grant justice and reparation for human rights violations, and at the same time be creative enough, so the two sides accept the sanctions. Stricter human rights standards pose harder obstacles to reach an agreement to end the conflict, but impunity opens the path for future conflicts.³³ How do you harmonize both objectives? What human rights standards should be followed? There is no right answer to this question. However, international human rights law provides an important guidance in this matter.

Ultimately, human rights and peace are interdependent from one another, and not just from a theoretical perspective. Human rights are the language with which we can share our common vulnerabilities and desires for the fulfillment, and peace is based on that ongoing dialogue about our commonalities. The two-fold recognition of the other as an inherently worthy and valuable being and of our mutual responsibility of taking care of each other is the necessary condition for building peaceful communities.³⁴ This is what makes talking about human rights so wonderful, it offers a common language of encounter with other human beings who

³¹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, VIII (Dec. 2001), available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

³² Stahn, Carsten, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 Am. J. Int'l L. 99, 120 (2007); Peter Hilpold, *The Duty to Protect and the Reform of the United Nations – A New Step in the Development of International Law?*, 10 Max Planck Yearbook of United Nations Law Online 35 (Brill Academic Publishers 2006); Evans, Gareth, *The Responsibility to Protect and the Duty to Prevent*, 98 ASIL PROC. 77 (2004).

³³ Bell, Christine, *Peace Agreements and Human Rights* (Oxford University Press, 2004).

³⁴ Clements, Kevin, “New Wars, Old Wars: Thinking Creatively About the Prevention and Transformation of Violent Conflict in the Twenty-first Century”, in *Activating Human Rights and Peace* ed. Baden Offord, Dr Rob Garbutt and Bee Chen (Ashgate Publishing, Ltd., 2013) 68-70.

are different but at the same time radically equal. In short, it offers a language for peace.

2.3 *Development and Peace*

The relationship between peace and development is circular because stagnated development is both the cause of social conflict and the input for its continuation. Conflict further hinders the development of a country because of its immense costs in terms of human lives and economic resources. This two-way relationship makes peace and development interdependent. Underdevelopment provides elements for social conflict. It is not necessarily or always its main factor, but unjust inequalities certainly ignite and maintain social conflict. In 1967 Pope Paul VI said, "development is the new name of peace"³⁵ This truly prophetic statement that condenses the close interdependence between development and peace elaborates that peace is not just the absence of warfare, but is the daily effort for a perfect *justice within human communities*, in particular, justice for the poor. Justice and peace are deeply connected because they are the common good shared in a political community.³⁶ When unjust situations are prolonged over a long period of time, peace is disrupted. Since "the modern language of rights provides... a precise instrument of sorting out and expressing the demands of justice",³⁷ human rights violations disrupt on their own the peace of communities.

Similarly, in the Declaration of the Right to Development,³⁸ countries of the world stated that "international peace and security are *essential elements* for the realization of the right to development."³⁹ Years of war and conflict have taught nations a valuable lesson about the heavy burden that war imposes on (human) wellbeing. The terrible loss of human lives, itself an immeasurable obstacle to real development, is often exacerbated by the loss of resources spent on military armament that could have been invested into well-being and real human flourishing. Indeed, national development suffers over armed conflict.

In short, if underdevelopment is one of the factors or what incentives conflict, and development is a necessary condition for peace. Similarly, when the human being is considered the primary concern of development, human rights must also take center stage. Moreover, peace can be achieved only when development is based on human rights. In short, the idea of development as peace is only plausible when human rights are respected. Where do business entities fit within this virtuous circle?

³⁵ Pope Paul VI, Encyclical letter *Populorum progressio* (1967) no. 76.

³⁶ Finnis, John, *Public Good: The Specifically Political Common Good in Aquinas*, in *Natural Law and Moral Inquiry* (Robert P. George ed. Georgetown Univ. Press 1998) 174- 209.

³⁷ Finnis, John, *Natural Law and Natural Rights*. (Oxford Univ. Press 2011) 210.

³⁸ Declaration on the Right to Development G.A Res. 41/128 U.N Doc. A/RES/41/128 (4 December 1986).

³⁹ *Ibid.* preamble. para. 11 (Emphasis added).

3. THE VIRTUOUS CIRCLE AND THE ROLE OF BUSINESS ENTITIES

The world's power structures have seen a dramatic shift in the last fifty years. Business corporations have become wealthier, more powerful, and influential in societies than some countries or international organizations. In 2012, of the world's 100 largest economic entities, 40% were corporations. For instance, "in 2009, Wal-Mart Stores had revenues exceeding the respective GDP's of 174 countries including Sweden, Saudi Arabia, and Venezuela and employed over 2 million people, more than the entire population of Qatar. If it were a country, it would be the 22nd largest in the world".⁴⁰ Because of the economic power, political influence, and capacity to shape their environments, businesses are necessary in the promotion of human rights, peace, and development. Businesses are key players in the correct or incorrect flow of the virtuous circle that promotes the common good. Nevertheless, this is only if businesses are able to understand their purpose beyond the mere creation of profit, only then will they be able to contribute to the communities where they operate.

3.1 *Businesses participation*

Businesses have been perpetrators of gross human rights violations, and contaminators of the environment. In fact, during the past decades, several cases have drawn the attention of the international community to businesses' direct or indirect participation in human rights violations. In 2008 the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises ("Special Representative") issued a report⁴¹ on the patterns of human rights violations in 320 cases that occurred between February 2005 and December 2007.⁴² The study revealed that corporations negatively impact a broad range of human rights, which include civil, political, economic, social, and labor rights.

⁴⁰ Keys Tracey, Thomas Malnight, *Corporate Clout: The Influence of the World's Largest 100 Economic Entities*. (2013). <http://www.globaltrends.com/knowledge-center/features/shapers-and-influencers> See also, John Cavanagh and Sarah Anderson, *Top 200: The Rise of Corporate Global Power*, (Dec. 4, 2000) http://www.ips-dc.org/top_200_the_rise_of_corporate_global_power/. Keys Tracey, Thomas Malnight, *Corporate Clout: The Influence of the World's Largest 100 Economic Entities*. (2013). <http://www.globaltrends.com/knowledge-center/features/shapers-and-influencers>.

⁴¹ Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse, UN. Doc. A/HRC/8/5/Add.2 (May 23, 2008) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/61/PDF/G0813661.pdf?OpenElement>.

⁴² *Ibid.* at 23

Moreover, the report demonstrated that most cases, corporate participation in the alleged abuses was direct (around 59%), and that the abuses affected communities in more than thirty countries throughout different regions of the world.⁴³ On the other hand, 49% of the cases involved indirect participation of corporations and occurred in sixteen countries in the four regions with the most significant concentration of developing countries: Africa, Asia - Pacific, Latin America, and the Middle East.⁴⁴ Businesses have, thus, become the center of concern for numerous international organizations, states, and human rights advocates around the world. The unequal economic or social power of some companies has restricted the freedom and rights of individuals that are under their sphere of influence. According to Juan Maria Bilbao, “the private powers today constitute a threat to the effective enjoyment of the fundamental rights no less concerning than the threat represented by the public power.”⁴⁵

However, ethically managed corporations promote human rights, directly and indirectly, through their regular economic activity by creating jobs and wealth; promoting development of new technology through innovation and research; making basic elements for human life such as food, clothing and housing accessible; and serving as a channel to develop the essential social nature of human beings and exercise the right of freedom to associate. Examples of good practices can be found around the globe where businesses through corporate social responsibility (CSR) practices have become promoters of important initiatives in favor of the rights of their communities.⁴⁶

Similarly, business corporations can be peace-builders, and in fact, they have been in Colombia.⁴⁷ In 2017, several business groups joined the national initiative to contribute to the construction of the Colombian society through various initiatives to promote education, employment, improve the quality of life of victims and support them to return to their lands, and allow former combatants to become reintegrated into the job market.

For example, the bank *Bancolombia* together with the national association of businessmen (*Asociación Nacional de Empresarios de Colombia*, ANDI) created a program of social volunteers for the reconstruction of the areas that were most

⁴³ *Ibid.* at 16 –17.

⁴⁴ *Ibid.* at 40

⁴⁵ Bilbao Ubillos, Juan María, La eficacia de los derechos fundamentales frente a particulares (Centro de Estudios Políticos Constitucionales, 1997) 243 (Translated by the author of this article).

⁴⁶ Smith, Jacquelyn, *The Companies With the Best CSR Reputations*, Forbes (Sept. 17, 2015) <http://www.forbes.com/sites/susanadams/2015/09/17/the-companies-with-the-best-csr-reputations-in-the-world/#b9fdab9762c4>; Jane Nelson, *Corporate Social Responsibility: Emerging good practice for a new era*. OECD Observer (Last visit March 2016) http://www.oecdobserver.org/news/fullstory.php/aid/4369/Corporate_Social_Responsibility:_Emerging_good_practice_for_a_new_era.html#sthash.JAAee5EN.dpuf.

⁴⁷ Rettberg, Angelika, Angela Rivas *Op. Cit.*, at 16.

affected by the conflict.⁴⁸ Similarly, *Bavaria*, through the "Shops of Peace" program, is promoting the return of victims to their land from which they were displaced by violence.⁴⁹ La *Empresa de Servicios Públicos de Medellín y Colombia* (EPM) designed the "Energy to Return" through which it seeks to facilitate energy service for the population displaced by the armed conflict. In turn, companies such as Bayer, Sura, and Cemex are part of the 62 companies that have created a program to plant 2,700 trees, improve six schools, and teach 22 workshops in financial education and good agricultural practices.⁵⁰

Moreover, businesses and entrepreneurship are at the center of the concept of development in which the poor are not considered the problem but the solution, and are entrusted with the responsibility for their own density.⁵¹ Poor people can participate in the process of overcoming the cycles of poverty in which they are immersed when they have access to means of production and to networks of wealth creation, accompanied by a trade policy that guarantees openness to market in a safe environment for local producers. In addition, it is necessary to implement a rule of law that grants stability for commerce, combined with social investment, which enables those who are more vulnerable to satisfy their basic needs.⁵² Businesses are the means of creating wealth, and of helping people become independent from aid. However, crony capitalism, where a small number of big corporations dominate the access to markets, limited competition, and abuse of position make business corporations the very cause of the problems that they could help to solve.

In short, undeniably, businesses take part in the achievement of the virtuous circle, but they must be regulated and be ethically driven in order to do it. When the norms are not well enforced, or mistakenly designed, businesses cannot be blamed entirely for the negative impacts they cause. States have a fundamental responsibility of designing the appropriate legislation that requires business performing activities in their territory to respect human rights, become peacebuilders, and participate in the promotion of human development.

⁴⁸ Andi y Bancolombia apoyan el posconflicto. [en línea], [23 de febrero de 2018]. [Consulta: 7 diciembre 2019]. Disponible en: <https://www.larepublica.co/especiales/especial-rse/andi-y-bancolombia-apoyan-el-posconflicto-2602376>.

⁴⁹ Las 'Tiendas de paz' que potencian los emprendimientos en las regiones de Colombia. [en línea], [23 de agosto de 2018]. [Consulta: 7 diciembre 2019]. Disponible en: <https://www.larepublica.co/responsabilidad-social/las-tiendas-de-paz-que-potencian-los-emprendimientos-en-las-regiones-de-colombia-2762362>.

⁵⁰ El papel de las empresas en el marco del posconflicto. [en línea], [8 de agosto de 2018]. [Consulta: 7 diciembre 2019]. Disponible en: <https://www.agronegocios.co/analisis/mariana-jaramillo-thomas-2756345/el-papel-de-las-empresas-en-el-marco-del-posconflicto-2756344>.

⁵¹ Collier, Paul, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It* (Oxford University Press, 2007). 160-171.

⁵² Sen, *Op. Cit.*, 42, at 75.

3.2 Regulating Businesses for the Common Good

Every society has different social and economic realities, which necessarily implies that every country needs different norms to address its particular situation. Accordingly, there is not a unique recipe of norms that guarantees that businesses will have a positive role in the construction of the common good because it depends on the particular situation of each country. However, governments should consider including at least the following elements into their legal framework in order to achieve the virtuous circle described in the section above. The elements are: (1) legally require businesses to respect human rights and implement legal mechanisms to remedy corporate abuses; (2) design foreign investment protection and trade norms that allows the states to have enough freedom to pursue social interests even in detriment of foreign investors; and (3) promote a system of incentives for businesses to act independently.

As a first step, in June 2011, the UN Human Rights Council endorsed the United Nations Guiding Principles on Business and Human Rights (UNGPs), which have become the focal point of the business and human rights movement.⁵³ The thirty-one Guiding Principles are divided into three parts according to the framework of "protect, respect and remedy": (1) the State's duty to protect human rights; (2) the corporate responsibility to respect human rights; and (3) have access to an effective remedy for the victims.⁵⁴ According to the UNGPs, businesses have the responsibility to respect human rights, which means "avoiding the infringement of the rights of others and addressing adverse impacts that may occur".⁵⁵ This responsibility is independent of the State's capacity to regulate or enforce it. Furthermore, this responsibility involves all the potential human rights impacts produced by the business's activities or through its relations with other actors (supply chains), which means that it covers direct and indirect participation in human rights abuses.

States should include in their national legislation norms that require businesses to avoid and prevent human rights violations through their own activities or their commercial relationships and to perform human rights due diligence in all their commercial activities, following the UNGPs. In addition, states should create legal mechanisms such as a special ombudsman to receive claims against businesses or allow victims to use the existing legal actions in various Latin American countries

⁵³ The Guiding Principles have been endorsed by different states, NGOs, and international organizations. The Working Group created to develop the implementation of the Guiding Principles has issued several reports on how the Guiding Principles have been embraced. The reports of the Working Group are available at: <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>

⁵⁴ Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises UN. Doc. A/HRC/14/27/Add.2 para.57 (April 9, 2010) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/126/29/PDF/G1012629.pdf?OpenElement>

⁵⁵ Guiding Principles, *supra* note 97, at 13.

such as *amparos* or *tutelas*, which might be limited to protect citizens from state abuses, to seek a remedy from corporate abuses.

As a second step, the states should negotiate foreign investment protection agreements and trade treaties in a way in which the corporate investors are required to contribute to the development of local communities. These can be done conditioning Transnational and Multinational Corporations to hire local people, incorporate into their supply chain local producers, and implement CSR programs to help local communities. Moreover, the states' international compromises should allow governments to sanction investors that are negatively affecting the environment, or human rights without necessarily in it being translated as a process requiring the involvement of an arbitral tribunal against the state. These freedom states need, requires a new model of international investment treaties that protects foreign investment in a strategic way because not all investment is necessarily conducive to development. According to the concept of development explained above, economic growth is important but is not the only element that is required to promote integral human development. An investment that harms human rights or the environment is not promoting development, and even if it increases the flow of incoming capital. Accordingly, international investors, negotiators of international investment treaties, and international investment tribunals should remember which is the final goal and reason for promoting foreign investment in developing countries and act accordingly.

Lastly, states should promote and incentivize business entities to guide their actions by the principle of solidarity. Solidarity is the shared responsibility every social actor has towards the common good of its community.⁵⁶ It comes from the recognition of the unavoidable interdependence between the members of the political community, and of the importance of addressing that interdependence in a responsible way so every member of society can achieve its fulfillment. This principle calls for action beyond the "do not harm" rule, to active involvement in seeking the good of others.

Governments could incentivize corporate solidarity through tax benefits for businesses that implement solidarity programs, include responsible social behavior as a public procurement selection criterion, or design public-private partnerships to join efforts with businesses to assist those in greater vulnerability. Furthermore, the government should promote investment and international cooperation for local entrepreneurship favoring those businesses that produce *shared value* for them and society. Shared value means that while business produce profit for their

⁵⁶ Wolfrum, Rudiger, *Solidarity*, in *The Oxford Handbook of International Human Rights Law* (Shelton, Dinah ed., Oxford University Press, 2013) 401.

shareholders, they help to satisfy social needs.⁵⁷ Examples such as Unilever,⁵⁸ and Patagonia⁵⁹ are models of businesses that have innovated in order to produce shared value with their economic activity. The best form to advance to a supportive society is through the alignment of private and public purposes, which in the case of businesses, is to produce profit and satisfy social needs through their economic activity.

The premise behind the proposed legal framework is that the businesses' purpose is to contribute to the common good of the community where they participate. They do it through a chain of interdependencies such as offering a product or service, creating jobs, creating channels of investment, providing a channel to distribute economic value, and generating an environment of personal leadership.⁶⁰ Therefore, legal norms should regulate and incentivize business' good economic performance in a way that they actively contribute in the virtuous circle that leads to a thriving society. Legal norms are relevant because they clarify the expectations society has of businesses, and bound businesses that might not act purely motivated by ethical demands. Accordingly, governments must be strategic in the development of a legal framework for businesses looking to align the production of wealth with human rights respect, promotion of integral human development, and peace.

4. CONCLUSION

The article has explained the interdependence between human rights, development and peace. This interdependence implies that states cannot pursue any of these goals without the other two. Understanding peace separated from development is mistaken, such as conceiving development without human rights. Recognizing this interdependence is crucial for the development of public policies and legislation that is conducive to the achievement of the common good.

Businesses are essential for the flourishing of a political community because of their capacity to impact people's human rights, sustain conflict or build peace, and as motors of development or underdevelopment in their communities. This factual

⁵⁷ Michael E. Porter y Mark R. Kramer, «Creating Shared Value: How to Reinvent Capitalism - and Unleash a Wave of Innovation and Growth. (The Big Idea) (Cover Story)», *Harvard Business Review* 89, n.º 1 2 (2011): 62.

⁵⁸ «Creating and Sharing Wealth», Unilever global company website, accessed December 6, 2019, <https://www.unilever.com/sustainable-living/enhancing-livelihoods/inclusive-business/creating-and-sharing-wealth/>.

⁵⁹ Francesco Rattalino, «Sustainability and Competitive Advantage: A Case of Patagonia's Sustainability-Driven Innovation and Shared Value», in *Handbook of Research on Business Ethics and Corporate Responsibilities* (IGI Global, 2015), 330–355.

⁶⁰ Melé, Doménec, *Not Only Stakeholder Interests*, in *Rethinking the Purpose of Business: Interdisciplinary Essays from the Catholic Social Tradition* 198 (S. A. Cortright, and Michael Naughton ed., University of Notre Dame Press, 2002).

relevance must be followed by a normative approach about what should be the way business entities ought to direct their activities in order to promote the common good and not to undermine it. Accordingly, the article proposed that businesses should be legally required to respect human rights, and states should condition foreign investment in our countries to guarantee a real commitment of foreign corporations in favor of local communities and producers. Furthermore, states should create a framework of norms and policies that incentivize a business to act in solidarity beyond the obligation to not harm with their actions. These might be accomplished through the promotion of new local businesses and the attraction of foreign corporations that can produce a shared value for them and society.

The virtuous circle between human rights, development, and peace is a normative framework that can be used to better explain the relevance of businesses and their responsibilities in the construction of healthy and thriving societies. This framework can inform the current conversation about business and human rights in order to explain from a more comprehensive perspective businesses' impact on people's well-being. Accordingly, the growing movement of business and human rights should include in their conversation development, peacebuilding literature and actors. Otherwise, the framework developed to regulate socially responsible businesses' behavior will be insufficient because it will only address human rights leaving aside the business' impact and responsibilities towards development and peace.

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