Risk, Reputation and Rights:

The "Added Value" of Voluntary Human Rights Codes and Policies for Multinational Companies Operating in Conflict Situations: A Case Study of Colombia

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Introduction

Colombia's history is one of the exploitation of a wealth of natural resources, and consistent and sometimes spectacular economic growth amidst the world's longest running armed conflict and massive human rights violations. And throughout the last century and into this one, multinational companies have immersed themselves in this violent and challenging environment. These companies are attracted to Colombia in spite of the conflict because not only does the country have rich mineral and oil deposits, but a sizeable consumer market that attracts multinational vendors like Coca Cola.

Certainly, companies have strong economic incentives to exploit these resources, and have relied heavily on the central government to provide an at least tolerable security situation. This has not meant, however, that the government always sends out its regular armed forces to protect key sites from actors such as the Revolutionary Armed Forces of Colombia (FARC). Instead, Bogota politicians actively supported and funded paramilitary groups which, while claiming to respond to the guerrilla threat, actually sought the extraction of rents from the control of land and resources to fuel their war machine. Into this mix, companies have benefitted economically from the paramilitaries' (and occasionally central government's) securing of zones of economic interest such as mining, banana and biofuel (palm oil) zones as part of the government's attempt to secure foreign direct investment (FDI) (Balch 2007).While the unique difficulties of operating in a conflict environment, such as the payment of extortions to armed actors, may raise internal costs higher than in other countries, multinationals in a variety of industries have remained immensely profitable (Silverman 2008). Due to this profitability, they historically have been able to ignore displaced groups claiming access to traditional lands, or striking union workers, as an "added cost for business" (McBeth 2003, 67).

In the 1970s and 80s, the presence of a thriving drug trade and left-wing armed groups such as the National Liberation Army (ELN) and FARC, combined with the Colombian state's inability or unwillingness to provide security in many regions in the country, led to a rise in paramilitary groups. Initially fragmented, these groups eventually consolidated into the United Self-defense Forces of Colombia (AUC). Though the AUC's stated goal was to counter the guerrilla threat, their effective war financing strategy was to seize land from indigenous, Afro-Colombian and peasant groups (Romero 2007). These groups had been fighting for decades for legal recognition of land titles, some dating back centuries, which the paramilitaries and others then overrode by a variety of legal, pseudo-legal and illegal methods (Human Rights Everywhere 2006).

Government officials' and forces' cooperation with paramilitaries to ensure the most favorable security and investment climate for large multinational and national companies, particularly in extractive industries but also in palm oil, has led to the undermining of human rights (Short 2004), most graphically through anti-union violence, with 38 trade unionists murdered in Colombia in 2007 (Clancy 2008). On this issue, the government frequently sends a double message, offering minimal protection of union leaders even as it continues sharp anti-union rhetoric (Diaz 2008). Multinationals such as mining

companies, for their part, have benefitted from both zones of land the paramilitaries have "consolidated" for them, and from a disorganized and intimidated labor force (Puerta 2008).

This dissertation will not attempt to explore the nature or extent of ties between paramilitary groups, the Colombian government and businesses, other than to assume that such ties are significant, a reasonable assumption given recent testimony by ex-paramilitary leaders about the Chiquita company's and other companies' making of "protection payments" (AP 2007). Rather, it will argue that in the case of Colombia, two kinds of external activist pressure, legal activism and shareholder activism, have been key in getting companies to respond proactively to alleged complicity in human rights abuses and that both activists and corporate officials came to view the issues at stake in human rights terms. The paper will also consider which companies, in response to these compromising situations, have adopted internal human rights policies and signed on to voluntary codes, such as the UN Global Compact, as opposed to other responses such as corporate social responsibility (CSR) programs, and consider possible reasons for why they chose to do so. Strong evidence exists to suggest that companies view issues of security and human rights in terms of risk management and reputational damage (Echavarria 2008); whether they benefit from the adoption of specifically human rights measures, remains open to debate.

Research Methodology

Given that many Colombian small and medium businesses (ranching, agriculture, small mining) are more intertwined with the conflict in terms of the widespread paying of rents on assets and land (Richani 2002), one might ask whether a study focusing on multinationals is useful for enhancing our understanding of business and human rights in conflict situations. The choice to do so is a pragmatic one based on the greater international activist pressures multinational companies face vs. national companies, and greater difficulty in finding information on national actors. As a rule, the larger the company, the more likely it is to face certain kinds of human rights-related risks such as criticism resulting from extensive violation of indigenous land rights, and the payment of large extortions, while small enterprises may face more direct attacks on their personnel (Rettberg 2008).

Thus, the focus will be on multinationals because many of these actors, some of whom who have faced pressure on human rights issues elsewhere in the world, have greater viable alternatives to business as usual, as a growing number of NGOs and consultancies—such as the Bogota-based Fundación Ideas Para la Paz (Ideaspaz)—stand ready to help them explore what broadly-written principles like the Global Compact, Voluntary Principles on Security and Human Rights (VPs) and other codes mean for their day-to-day operations (Fundación Ideas para la Paz n.d.). Finally, multinationals are also in focus because they face stronger reputational pressure on multiple levels, from indigenous activist groups in Colombia to international human rights groups (Rivas 2008).

Research for this dissertation is based on analysis of news and journal articles about multinationals' operations in Colombia over the past several years, foundational literature on business and human

rights, reports by NGOs and academics both taking a collaborative approach to corporate social responsibility, and critical of companies' perceived failures or lack of efforts, and companies' own CSR reports and web materials, including human rights policies. Additionally, a series of interviews with academics, NGOs and labor union leaders brings a variety of perspectives on the issue.

One area ostensibly missing from the paper is an in-depth analysis and comparison of the substance of various voluntary human rights principles and codes. While what documents like the Global Compact say and what they mandate signatory companies to do is certainly relevant to a discussion of businesses' motives for adopting them, such an analysis would raise complex questions about the usefulness of voluntary codes for promoting human rights, and companies' practical ability and sincerity to implement them, that are beyond the scope of this paper. When companies do sign voluntary instruments and do not follow through, however, they expose themselves to ongoing criticism (and hence reputational risk) from NGOs and the media, which defeats the reason for adopting such measures in the first place. So, the dissertation will take as its starting point the idea that major multinational companies' statements on why they adopt policies and codes, and the circumstances in which they do so, are "good faith" attempts to delimit and implement whatever goal they set for themselves, including respecting human rights.

Another angle not addressed here on the topic of why and when companies choose to implement voluntary human rights codes is the role of individual agency in carrying ideas about business and human rights between companies and from other sectors, such academia, into the corporate world. According to Alexandra Guáqueta, Public Affairs Advisor at Cerrejón, the role of individuals is key in gaining the acceptance of new ideas, in this case the relevance and usefulness of voluntary human rights codes both in bolstering security for extractive industries companies in conflict zones, and in shaping a shared perception within the organization that practicing such codes is "the right way to do business" (Guáqueta 2008). She asserts that one key route for the diffusion of new ideas, such as voluntary codes, is that they are carried in the minds of individuals. For example, in the case of Cerrejón, Guáqueta's predecessor there, Andrés Soto, had received formal training on human rights, and Guáqueta herself had worked on another company, Occidental Petroleum, that had previously faced risks and reputational crises related to human rights. Additionally, she also worked at Fundación Ideas para la Paz, a Bogotá-based think tank that partners closely with large businesses in Colombia to address issues they face surrounding the conflict.

In this case, each actor – Occidental and Ideaspaz – brought its own experiences and learnings to bear on issues of security and human rights and hence the movement of an individual between these institutions, able to process and distill lived experience and then convey it to others in new settings, was certainly a direct and effective way to get another organization – Cerrejón – to further develop and implement best practices in human rights. The question as to how the ideas of individuals, who bring new perspectives when they move jobs, are adopted internally within the new company draws upon literature ranging from organizational theory and psychology, to contributions from international relations concerning the diffusion of norms such as democracy. This paper, in contrast, is not intended to address the internal psychological or organizational theory aspects of businesses' learning behavior

on human rights; my own background is in political science, which while not neglecting theories of individual decision-making, tends to focus on external pressures and incentives placed upon institutions, so if anything, the paper reflects this bias. An important point to note is that while companies' executive leadership is often insulated in time and space from the site of human rights atrocities, away from conflict hotspots in offices in national capitals or even further away in global capitals such as London or New York, these officials do not operate in a vacuum and media attention concerning the two sources of pressure in this paper—legal and shareholder activism—can and does register with key people when the company's reputation is on the line. And for individuals employed by companies who are pushing for internal change – through the adoption of human rights codes, for example – such external pressure can bolster their case and help to create a company-wide impression that something must be done; while more study of both internal and external agency on business and human rights is necessary; this paper focuses on the latter.

One major shortcoming of this project is that I was unable to meet with on-the-ground multinational representatives, or other spokespeople for a corporate perspective due to tight time constraints on a research trip to Bogota and Medellin, so the paper lacks substance regarding this crucial perspective. Given these constraints, the paper will focus on an analysis of companies' publicized statements and documents from their websites. Admittedly, companies' internal decision-making procedures are just that – internal – and it is difficult if not impossible to determine cause-effect relationships between companies' historical experiences, activist pressures and the adoption of human rights standards. So the paper is essentially an exploration of international factors that make their adoption more likely; the emphasis is on the international environment because what labor unions, lawyers and others can do in Colombia to affect the behavior of multinationals is limited by the often violent opposition they face (Parker 2008). Additionally, successive Colombian governments' anti-union and anti-activist rhetoric, equating these groups with the FARC and other guerrillas, have created a climate of fear and suspicion that dissuades many would-be critics from speaking out; activist lawyers, shareholders and NGOs in the U.S. and Europe do not face these same barriers (Diaz 2008).

This paper will first look at four company case studies: Drummond and Chiquita regarding legal activism, and Coca Cola and Occidental for shareholder activism. Finally, we will consider Colombian coal mining company Carbones del Cerrejón since its joint venture partners Anglo American, BHP Billiton, and Xstrata are multinationals. These companies represent some of the most high-profile cases in Colombia's recent history of multinationals accused of complicity in human rights violations. Finally, the case study of Cerrejón will explore best practice in human-rights related risk and reputation management, both by Carbones del Cerrejón, and by one of its owners, Anglo American.

Legal Activism

The Alien Tort Claims Act (ATCA)

The Alien Tort Claims Act (ATCA) is a rare piece of legislation dating back to 1789 that allows plaintiffs outside the U.S. to bring U.S. nationals and corporations to court. It states that "The district courts shall

have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States" (Human Rights Watch n.d.). Arguably the most important and successful ATCA case against a company came in late 2004 when Unocal, an oil company operating in Burma, reached an agreement to settle out of court with former workers who alleged that Unocal subjected them to slave labor (Cameron 2004). One of the most serious cases of alleged corporate complicity in killings, Drummond, is considered below.

Drummond

In 2002, Drummond Mining, a U.S. based company, was charged under the ATCA with "paying right-wing paramilitaries to kill three union leaders at a mine it operates in Colombia" (Reuters 2007). Leftist writer Jeffrey Webber, discussing the case, makes the point that it is the disproportionate power of multinationals (and the Colombian government's granting of central importance to their activities) combined with corruption and a lack of rule of law that allows these companies to sway judicial processes in their favor through bribes and legal maneuvers (Webber 2008). So, for victims of U.S. multinationals, the ATCA today represents the one possible law and U.S. courts the one possible venue that might be fair enough to produce accountability for companies' alleged crimes. The ATCA is especially crucial to force accountability upon those companies which not only deny all allegations against them, but refuse to commission independent reviews of their business practices or other pseudo-judicial procedures. Drummond is one of the clearest examples of corporate stonewalling:

> "Facing the accusations of which the company has been a target, Drummond publicly states that it has not nor will it make any payments, agreements or transactions with illegal groups and emphatically denies that the company or any of its executives had any involvement with the murder of the three labor union leaders" (Drummond Mining 2007).

Much of the difficulty for plaintiffs' winning ATCA cases stems from judges' lack of experience applying the two centuries-old law; there remain real challenges in sorting through the often convoluted evidence from conflict zones. Referring to the Drummond case, two lawyers who represent high-profile corporate clients, Faith Gay and Noah Hagey, state the following:

> "During the case-in-chief, plaintiffs were unable to procure testimony from a number of Colombian witnesses, including from alleged former members of the AUC with purported first-hand knowledge of Drummond's connections to the AUC. Letters rogatory and other requests to depose the witnesses in Colombia or bring them to Alabama were either rejected or not processed in time for trial, despite efforts by members of the U.S. Congress to intervene on plaintiffs' behalf." (Hagey 2007)

Not only did Drummond officials make emphatic public denials of responsibility, but their lawyers also may have played a role in blocking key witnesses who might have proven a link between the company's actions and the deaths (Lopez 2007). While these tactics might have been more exposed had Drummond been a higher-profile company, they received relatively little coverage in the press compared to campaigns carried out against Coca Cola, Occidental and other companies operating in Colombia. Commenting on this lack of publicity, Cristina Echavarria, a mining-community relations

expert, says that the implications of the Drummond case have not been "fully ventilated" and that NGOs and others have yet to realize the seriousness of the charges made in court (Echavarria 2008).

Note here the company's outright denial of all liability in the strongest possible terms. Given the nature of the allegations involved – the murder of three trade unionists – this denial is not surprising. Nevertheless, Drummond had not experienced a human-rights related reputational crisis of this magnitude before in its history and its public response was limited and piecemeal. On its website, the company issued only a handful of statements denying culpability and expressing condolences for the murdered union leaders and their families, but did not undertake or publicize a human rights policy, join any voluntary codes or lay out a corporate responsibility policy (Drummond Mining 2007). Instead, the company emphasized the importance of the trial's outcome and pointed out that "other companies reject to settle because they consider that they have acted properly and any payment or settlement would be an incentive for future wrongful [legal] actions" (Drummond Mining 2007).

In part, this response is not uncommon for U.S. companies, who often take a heavily legalistic approach to questions of responsibility for rights violations; in contrast, European extractive industries companies like Anglo American have elaborate social engagement agendas and strategies in place for dealing with crises and issues. While Drummond has not publicized such strategies, it does have a limited conception of social responsibility:

> "Drummond has always been respectful of all the communities in which it operates, and continually strives to be a model corporate citizen. Our employees and their families live, work, and enjoy their leisure time in the communities where we are based" (Drummond Mining n.d.).

This statement seems to indicate that Drummond officials conceive of their responsibility as "corporate citizenship" but that this citizenship, up to now, is not nearly as extensive as some other extractive industries companies. Perhaps this also explains why the company did not adopt a human rights code; the efforts required to create, and moreover to implement, a code are involved and may have been beyond what Drummond saw as feasible or desirable, in spite of a history of anti-union activities going back to the 1980s (Sintraminercol 2004).

Chiquita

In contrast to Drummond, the case of Chiquita, a much more "household name" brand, is markedly different. Chiquita, in response to an article in *El Tiempo*, Colombia's national newspaper, answered that it was "forced to pay" protection money to paramilitary groups to protect its personnel and pointed out that it voluntarily revealed its predicament to the U.S. government (Ethical Corporation 2008). The company, whose name is synonymous with bananas on breakfast tables, made the bold choice to admit wrongdoing in financing a U.S.-designated terrorist group also known to commit human rights violations. Attempting to avoid further legal repercussions, it also reached a settlement with the U.S. Justice Department for U.S. $25 million (BBC News 2007).

Nevertheless, the company's social responsibility and human rights strategy, despite its higher profile, is far less comprehensive than some extractive industries companies. Chiquita states that "Corporate

Responsibility…is an integral part of our global business strategy. It commits us to operate in a socially responsible way everywhere we do business, fairly balancing the needs and concerns of our various stakeholders" (Chiquita n.d.). The company recently revised its Code of Conduct and claims to be implementing it through an "Ethics and Compliance Program". They also claim to be "respecting and protecting basic human rights" and are a member of the Ethical Trading Initiative and follow a version of social accountability strategy SA8000 (Ibid).

Its significant effort notwithstanding, the fact that Chiquita has not gone beyond this to develop a comprehensive human rights policy, containing the sorts of elaborate independent reviews that companies like British Petroleum (BP) have,[1] is surprising given the scandalous and serious nature of their admission. And this is especially notable given the company's long history of troublesome labor disputes stretching back to the 1930s, when Chiquita's predecessor, the United Fruit Company, allegedly ordered government troops to open fire on striking union workers (Bucheli 2005). Also, Chiquita had a significant degree of choice and the ability to explore other options. Ex-paramilitary leader Salvatore Mancuso, in an interview with major U.S. news show 60 minutes, admitted that "They [the company] could go to the local police or army for protection from the guerrillas," though he added that "the army and police at that time were barely able to protect themselves" (Croft 2008).

Of course, another option that Chiquita had if the police or army proved unhelpful was to leave the country; in spite of the profitability of their Colombian operations, as a global fruit company Chiquita had the capacity to shift its activities elsewhere without seriously crippling its profitability in the long term, a choice many multinationals operating in conflict zones have that their local and national counterparts do not (Lazala 2008). Instead, the company chose to "deal" with the issue through interactions with paramilitaries. Certainly, the guerrillas were a real security threat in Uraba during much of the time (from roughly 1997 to 2003) that Chiquita operated there, and local army and police forces were at best inadequate and at worst, cooperating with paramilitaries. Yet Mancuso's admission seems to suggest that Chiquita was paying a protection "rent" in a fairly organized fashion (Ibid). This claim is not entirely untenable; in some parts of Colombia, protection payments are routinely made by a variety of businesses without aggressive extortion techniques used against them. Furthermore, state forces and paramilitary groups strove to create the best possible climate for foreign investment (Puerta 2008), and a multinational like Chiquita doubtless would have had more negotiating power than smaller actors, including threatening to leave the country and actually doing so if the situation did not change.

Despite Chiquita's admission to and cooperation with the U.S. Department of Justice, the case has received enough attention in the media that the company may still be in internal debate as to whether, given what has occurred, a comprehensive human rights policy and adherence to voluntary standards would be effective in restoring its tarnished reputation. What Chiquita has done since admitting to the "protection payments" has not shielded it from further legal action, with families of victims bringing

[1] http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/BP_Human_Rights_2005.pdf

further claims (Luhnow 2008). And the Chiquita case is an important example of where the exact circumstances in which it made the payments, which could emerge during an ATCA proceeding, could prove highly relevant to shaping the notion of corporate "complicity" (Ruggie 2008) and perceptions of exactly where to draw the line for businesses operating in conflict situations. Chiquita wrongly thought that the admission might grant it leniency from society:

> "[T]he admission might have been enough to get Chiquita off the hook. Companies and their executives who reported wrongdoing and agreed to cooperate often have enjoyed lenient treatment. Many received a "deferred prosecution" in which no charges were filed unless they committed additional crimes" (Wall Street Journal 2007).

Ironically, Chiquita may be taking the blame for its honesty, and whether its admission will encourage other, similarly situated companies to be more transparent and to avoid complicity in rights violations, remains to be seen.

The ATCA's Effectiveness

Needless to say, business groups consider the way "activist lawyers" use the ATCA to grossly exceed its original purpose. Their reaction signifies that the business community does perceive the law as a genuine threat to certain multinationals' reputation:

> "The framers of the Constitution would shudder at the thought that the Alien Tort Claims Act is being used to hit up U.S. companies for events that have happened in foreign countries that are completely outside their ability to influence"—John Murphy, U.S. Chamber of Commerce (Sostek 2007).

Other companies have argued that the bringing of lawsuits against U.S. companies by foreign nationals may undermine these companies' competitiveness. Ironically, Daniel O'Flaherty, Vice-president of the National Foreign Trade Council, admits that exactly what activists want may happen, worrying that "Large jury awards will send a message that if you are going to do business in a country where the government is violating human rights or labor standards, you may be sued" (Chepesiuk 2004).

This statement shows that both sides perceive the ATCA to be a legitimate legal threat to companies' free rein to operate independent of potential international legal sanction. In debating whether activist pressure through legal action, or in campaign and lobbying form is a more effective tactic, Terry Collingsworth of the International Labor Rights Fund (ILRF), an NGO that has been responsible for bringing several high-profile ATCA cases, explains that "We spent years negotiating with companies, working on voluntary codes, and at the end of the day, the companies viewed those as public relations devices." (Baue 2006).

Clearly, the legal process itself is important and when combined with NGO efforts to lobby, campaign and generate media attention of the cases and to publicize them, can be quite effective. Companies that violate human rights risk being labeled "*hostis humani generis*", an "enemy of all mankind" (Ibid). At the same time, skeptics remain as to the ATCA's long-term impact. Phil Rudolph of the Ethical Leadership Group thinks that "smart companies are improving their performance on human rights independent of

potential ATCA liability, and the ATCA is too obscure and poorly understood to inspire action from less forward-thinking companies" (Ibid). Notably and judging from his statement, Rudolph sees "smart" companies as those that improve human rights performance, apparently because it is in their interest to do so, independent of ATCA pressures, which would seem to suggest that effective lobbying and campaigning is what gets companies to view issues in human rights terms, not legal measures.

Have companies viewed the ATCA threat in human rights terms? Of the three companies—Coca Cola, Drummond and Occidental—that operate in Colombia and that have faced ATCA cases, only Coca Cola has chosen to sign on to a voluntary instrument in which companies agree to respect human rights, the UN Global Compact. Certainly, companies in certain industries are more sensitive to the public relations nightmare that can accompany ATCA cases than are others; Hagey and Gay note that "Particularly those multinational corporations with well-known global brands are often highly sensitive to public reaction to the inflammatory allegations in many [ATCA] filings regarding the alleged acts of foreign subsidiaries or joint venture partners" (Hagey 2007).

Yet this sensitivity and companies' willingness to implement corrective steps resulting from it have their limits; while Coca-Cola has signed the Global Compact, the company continues to face legal pressures; though a U.S. judge recently ruled that U.S. courts did not have "jurisdiction" to address Coca-Cola's role in killings of union workers at a Colombian bottling plant that supplies the multinational, as will be discussed in detail below, the case is under appeal and a jurisdictional ruling in favor of the plaintiffs would mean Coca-Cola would be forced to hand over all records detailing its relationship to the bottler and thus exposing the degree of effective control it exercised over them, hence its degree of responsibility for the killings (Thomas 2008). The exposure of such information might further the very public outcry that the company's legal maneuvers are seeking to obscure. Public outcry, in this case, means moral outrage at the repugnant nature of companies' alleged actions, of which human rights language is a specific legal and normative expression.

Though not synonymous terms, "public outrage" and "human rights violations" are closely rhetorically linked. As regards extractive industries, whose business is dependent on access to a few resource-rich sites, the cost-benefit analysis of staying in a country vs. leaving due to "public outrage" may still overwhelmingly favor staying. Other companies, such as clothing brands, often have a personal connection to their customers and do not wish to see their objects of merchandise psychologically linked to atrocities, as company representatives like the Gap's Elliot Schrage acknowledge: "The Unocal settlement legitimates the idea that [ATCA] is a real business risk", he says (Kurlantzick 2005). Schrage, in referring to an extractive industries case, seems to be reflecting the sentiment that if companies in this sector like Unocal—normally inclined due to profit incentives to turn a blind eye to many abuses for which they might be responsible—can be forced into settling out of court, then the reputational damage for brand-driven companies in such a situation could be far worse.

Shareholder activism

Theory

Once considered a niche market, socially responsible investing is here to stay with U.S. $ 2.71 trillion in total assets invested under one of three strategies (screening, shareholder advocacy, or community investing) in 2007 in the U.S. alone (Social Investment Forum 2007). While the exact linkages between executives' taking social, environmental and governance factors into account, and financial performance remain unclear, the overall empirical evidence that socially responsible management of companies boosts their performance is strong. A study by Goldman Sachs noted that "the market values companies on returns and rewards sustainable competitive advantage". The study found that "there is a close link between companies that lead on corporate governance and those that score well on social and environmental issues", but also that "We have found no correlation across sectors or within sectors between any of our ESG [environmental, social and governance] metrics and share price performance" (Global Investment Research, Goldman Sachs 2007).The linkage is much less clear, however in the specific case of human rights and still less so for companies operating in conflict zones. Jana Silverman of the National Labor School in Colombia points out that "many companies that have collaborated (through action or omission) with the paramilitaries have not suffered negative consequences such as a loss of profitability or credibility among the Colombian population, and least of all in the mining and petroleum sector" (Silverman 2008).

While direct evidence that companies' real or supposed complicity in human rights violations has an impact on profit in the short-term is lacking, human rights are closely linked to their reputation, and insofar as reputation affects their overall performance, some management consulting firms such as giant Deloitte Touche Tohmatsu are willing to take these factors into account in assessing companies' risk (Kiernan 2004). Similarly, other groups such as the British Association of Insurers have pointed out that "Risk aspects of corporate responsibility are as important as bottom line impacts. Companies need to incorporate these matters into strategic risk management, because they can have important implications for drivers such as brand value, market acceptability, human capital and new technology. Many companies are not yet managing these systematic risks adequately, posing threats to shareholder value, which investors need to take into account" (Ibid).

Nevertheless, many institutional investors remain sceptical of the merits of taking human rights or other considerations into account. Kiernan sees this reluctance as a "silent conspiracy" of fund managers and the acquiescence of boards of trustees and corporate boards alike in the face of consultants' and accountants' supposedly sound financial advice which is nevertheless based only on accounting data. This data only provides a "rear-view mirror" look at future performance (Ibid). Human rights and other intangible factors, however, may only impact upon a company's core operations (and profitability) in the medium to long term, while a company's failure to hire adequate security forces in contested zones may

mean production disruptions and real economic loss in the short term; as such, multinationals often go to great lengths to ensure security before acknowledging other considerations (Dunning 2002).

While companies are fiducially responsible for acting in their shareholders' best interests, directors still generally interpret these interests to be satisfied, above all, by quarterly earnings reports. This is slowly changing; the corporate governance scandals of the early 2000s have shown shareholders the importance of monitoring the long-term health of the companies they hold in their portfolio. Increasingly, these shareholders are taking their engagement one step further and filing resolutions at annual meetings urging companies to take action on environmental, human rights and other issues. Though most shareholder resolutions are unsuccessful, at most garnering 10% or 20% of votes (Kelleher 2006), their mere existence can pressure company executives to take a look at controversial issues.

One of the difficulties with shareholder resolutions, compared to other methods of activism, is that it is difficult to determine exactly what the majority of shareholders expect. When minority shareholders file resolutions claiming to be speaking for shareholders as a whole, to what degree should company executives take their claims seriously? This is especially true on controversial issues such as human rights where transnational activist campaigns bring attention to causes far away, but which do not significantly affect the company's financial performance or touch on an issue (such as corporate governance) of obvious relevance to investors' self-interest. When resolutions mention a specific human rights code, such as the VPs, by name, this can help to provide clarity to minority shareholders' demands, as the Interfaith Center on Corporate Responsibility (ICCR) shows:

> "In ICCR's current work with over 50 companies on human rights, we hear from many top managers that it is difficult to understand all the international human rights agreements and how they apply to business…The UN Norms…help address this confusion and eliminate any ambiguity about the obligations of private sector actors" (Interfaith Center on Corporate Responsibility 2004).

The financial benefits of SRI aside, many shareholders have yet to ask tough questions of Executive Boards regarding company performance on human rights. Though shareholder resolutions have grown immensely in the past few years, they tend to be focused on inter-continental, dramatic issues like global warming and the HIV/AIDS epidemic, which although also impacting on human rights, are very different from the kinds of issues specific to Colombia. One notable exception concerning the Coca-Cola Company will be discussed next.

Coca Cola

Of major multinationals operating in Colombia who have faced significant international pressure regarding their activities, Coca Cola by far has faced the most shareholder activism in the form of resolutions and divestment campaigns, with the NGO Interfaith Center on Corporate Responsibility (ICCR) filing eleven resolutions against the company since 2004 alone, and two specifically on human rights in Colombia, one each in 2004 and 2005. The 2005 resolution listed allegations that Coca-Cola's Colombian bottler Panamco was in "collusion" with paramilitary forces that murdered several union members (Amnesty International 2007, 27-32), and called for an "independent delegation of inquiry" to

Colombia including representatives from U.S. and Colombian human rights organizations (Interfaith Center on Corporate Responsibility 2005). The resolution received enough votes to make the proxy eligible for reintroduction next year, but no real mandate for the company to act on with a total vote of only 5.42% (Ibid).

Still, in response to the resolution Coca Cola showed, as other companies have, that the mere threat of a vote on controversial resolutions, or more effectively, an actual (albeit low percentage) vote, is often enough to open lines of dialogue between the company and activists. Coca Cola ultimately did go forward with the shareholders' request by inviting the ILO to conduct an independent investigation of its Colombian bottling facilities and to dialogue with the union, SINALTRAINAL, that had been threatened. While Coke, as companies usually do, did not attribute their willingness to allow an investigation and later joining of the Global Compact to the specific incident in question, nor to pressure from shareholders, they are careful to say that they every shareholder resolution "very seriously," to quote communications representative Charlie Sutlive. "We like to address these concerns before they become resolutions," he said. "We like to encourage a dialogue so we can find common ground on the issues our share earners are concerned with." (Kelleher 2006).

In bringing resolutions against Coke, shareholders are not necessarily calling for the company to withdraw from troubled regions; after all, their share prices are affected by the company's continued expansion. Rather, many believe that "a company's financial success is inextricably tied with its commitment to social justice", and "there is still hope that Coke will begin to see that it can do well by doing good. Or at least by doing less bad" (Ibid). Though often willing to keep their investments with a company, shareholders are insisting on more voice in what it does in its sphere of influence. And institutional as well as individual investors are getting involved in this trend. One major pension fund for educators and researchers, TIAA-CREF, accepts the "doing well by doing good" argument:

> "TIAA-CREF believes that building long-term shareholder value is consistent with directors giving careful consideration to issues of social responsibility and the common good…companies should be concerned with "environmental impact...human rights... labor issues…" (Make TIAA-CREF Ethical Coalition 2005).

In spite of TIAA-CREF's statement, the rigor and targeting of ethical funds' screening procedures remains in doubt, as does whether they will really divest from otherwise high-earning companies that violate their principles. One campaign, the Make TIAA-CREF Ethical Coalition, criticized the fund for continuing to invest in Coca Cola:

> "Coca-Cola – markets nutritionally deficient products to kids at home, tied to water shortages abroad and is complicit in gross human rights abuses, including murder, torture and kidnapping in Colombia" (Ibid).

Another anti-Coke campaigner, the Stop Killer Coke campaign's director Ray Rogers, said he did not "believe TIAA-CREF participants want to be associated with the tobacco industry or companies like Coca-Cola that are complicit in widespread human rights abuses" (Ibid). While the pension fund's governance document states that managers may consider social responsibility in assessing long-term shareholder

value, it nowhere says they must do so or what specific criteria are to be used. In July, 2006, TIAA-CREF consultants KLD Research & Analytic, Inc. advised TIAA-CREF fund managers to eject Coca Cola from their Social Choice Account on the ethically screened Broad Market Social Index (BMSI), which they did. The ejection came after KLD reviewed Coke and determined that the soft drink maker "did not meet requirements in areas relating to marketing to children, and overseas worker rights and environmental issues". Coca-Cola "had been in the index since it was launched in January 2001" (Reuters 2006). In response, a Coca-Cola spokesman issued the following statement to the director of the Business & Human Rights Resource Centre, an interested party that had re-published the original Reuters article:

> "The Coca-Cola Company and our bottling partners are demonstrating significant and continuous progress against key social issues. This is particularly true for the three issues that were the basis of KLD's decision to remove us from the BMSI – workplace rights in Colombia, water stewardship in India and health and wellness" (Coca Cola 2006).

Specifically, the letter also cited Coca Cola's allowing the ILO to conduct inspections of its bottlers in Colombia and a multi-stakeholder dialogue it chaired. Coca Cola also wrote a similar response to its shareholders explaining their removal from the Index.

Judging from this incident and considering the mounting pressure from groups like the Stop Killer Coke campaign in 2005, it is likely that these activists, particularly as shareholders, were one triggering factor that pushed Coke to join the Global Compact in March 2006, the Business Leaders' Initiative on Human Rights (BLIHR) in August, 2007 and to begin cooperation with the ILO when it did. As discussed above regarding the ATCA, the company continues to face, and should face, controversy regarding its role in the killings of the SINALTRAINAL workers (Thomas 2008). That notwithstanding, the company has shown sensitivity to investors seeking to push them on human rights, as has Occidental Petroleum, which we will discuss next.

Occidental

Along with Coca Cola, Occidental Petroleum has also faced pressure to engage with its stakeholders on human rights. And like with Coca-Cola, transnational activist networks have been the ones responsible for pressuring Oxy's investors, bringing suit under the ATCA and undertaking shareholder resolutions and divestment campaigns. In 2003, the first Global Stakeholder Report was released, with "Over 1,600 people from around the world interviewed for this first empirical study of the attitudes of diverse stakeholder groups to corporate sustainability reporting. Human rights was the single most important issue for stakeholders of all regions and groups. 62.8 percent of the respondents stated that the issue was 'very important'." (Group 2004) In spite of this overwhelming evidence, however, many companies still do not treat human rights substantively in their CSR reports. Occidental Petroleum is actually an exception to this trend and the ICCR has worked with them to develop a comprehensive human rights policy. Shareholders' voices have also been key in this process, as Oxy "recently agreed to adopt a formal human rights policy after ICCR members and associates filed a shareholder resolution calling for the development and implementation of such a policy" (Ibid).

Of course, it is difficult to show a direct cause/effect relationship between individual shareholders' resolutions, and the adoption of a human rights policy. A clearer case may be made, however, for pressure on institutional investors to divest from alleged rights-violating companies. Joanna Grundy, who wrote a dissertation on transnational activist campaigning in 2001, states:

> "Campaigning against Occidental's former largest investor, Fidelity Investments, has had dramatic results. After an international pressure campaign involving demonstrations at over 75 Fidelity offices around the world (between February and October 2000) Fidelity divested approximately 60% of its Occidental stock…Whilst Fidelity denies that this had anything to do with the pressure campaign, that fact that Fidelity divested at a time when Occidental shares had actually increased in value seems to indicate the contrary" (Grundy 2001).

Occidental has responded to these actions by putting a special emphasis on the fact that "being a good neighbor is good business", pointing out that "These activities also contribute directly to our long-term business success and stockholder values". Oxy clearly makes a link between stockholder value, and human rights issues within its sphere of influence. For example, on introducing the company's new human rights policy, Oxy's CEO stated:

> "While support for human rights has been an integral part of the way we have managed our business, this policy explicitly spells out our commitment to support human rights, strengthens our existing Code of Business Conduct and establishes an important milestone for our stockholders, our company and the industry." (Occidental Petroleum 2004)

Given Oxy's historical experience, in which they were accused of ordering the Colombian armed forces to carry out a bombing raid on their behalf along a key pipeline, accusations of legal violations and environmental destruction in Ecuador and a long-running struggle over land with a Colombian indigenous group, the U'wa, Oxy has had plenty of time to connect issues of its own security and ability to operate, with respecting human rights. A key mechanism by which most companies take decisions is risk assessment, exactly what the VPs are set up to address (Uriz 2003) and Oxy admits that "Comprehensive risk assessments are critical to company security. A clear picture of past and future risks may help avoid human rights abuses" (Occidental Petroleum n.d.). The company made this statement in explanation for why it participates in the VPs, showing that shareholder activists and campaigns for divestment, if not directly changing Oxy's behavior, are taking on board many of the same arguments that frame potential complicity in human rights violations in risk assessment terms.

In her dissertation, Grundy conceded that the divestment campaign had mixed results, failing to change the behavior of Oxy's other major institutional investors. While the campaign succeeded in getting Fidelity to divest from Oxy, Bernstein/Alliance Capital did not do so. Key to understanding when companies respond to pressure and when they do not is how much pressure from a given group or technique either increases reputational risk, or creates the perception of increased risk, as the next section will discuss.

Reputation and Human Rights

Reputation, according to CSR expert Patricia Villaveces, is connected to both legal and shareholder pressure (Villaveces 2008). "Reputational risk" in the context of security and human rights is a key buzzword for understanding how companies filter these diverse pressures into decision-making, to respond reactively to crises and ongoing issues by categorically denying allegations, or proactively by committing to CSR, or even more definitively, to human rights codes.

Theory behind reputation management

There exist multiple levels of public initiatives that corporations can choose to adopt in response to a perceived damaged reputation. One of the most traditional is corporate philanthropy and community investment programs, in which a company attempts to draw attention away from damaging allegations by pointing to the good things it has done: schools it has built and scholarships it has funded, for example. According to Cristina Echavarria, expert on corporate-community relations in Colombia among small-scale miners and large mining companies, such programs constitute a "political risk management strategy" (Echavarria 2008).

Of course, NGO campaigners have dismissed such strategies and their widespread publicizing through CSR reports as social "greenwashing". And even authors writing from a business perspective, such as Andrew Griffin, consider CSR as it is usually done and the reports that publicize it a grossly inefficient strategy considering the central importance 21st Century companies attach to reputation:

> "So, you are saying that your reputation is more important than any other aspect of your business, including your financial performance and employee and customer satisfaction. You are saying that your primary objective for protecting and enhancing your reputation next year is successful stakeholder engagement. At the top of the list of these stakeholders you plan to engage are three huge international environmental lobby groups and two government departments. And one of the key tools you plan to use in this engagement is your CSR report?" (Griffin 2007)

The author argues that companies should instead take a holistic approach to reputation management, linking financial performance to good corporate citizenship and social responsibility. As seen above, some companies, such as Occidental, have done this, arguing that good corporate citizenship is "good for business". "Good citizenship", however, which may and usually does include a variety of measures including community investment, does not preclude the adoption of binding human rights policies and codes. What Griffin takes issue with, though, is not companies' adoption of codes or standards *per se* but the defensive manner in which they adopt them, reactively rather than proactively:

> "There are, I suspect, very few things about which anti-business campaign group Corporate Watch and I agree, but the first sentence of its report on corporate social responsibility (CSR) in 2006 is one of them: 'CSR evolved as a response to the threat anti-corporate campaigns pose to companies' license to operate" (Ibid, 137).

Though quite comprehensive and perceived as necessary by the companies that adopt them, non human-rights CSR initiatives such as massive community investment are largely unique to multinationals and other companies of similar size, though in the Colombian context the idea of some sort of paternalistic responsibility toward those affected by companies' operations is nothing new and is

practiced by small and large businesses alike. Angelika Rettberg and colleagues at the NGO International Alert and Bogota's University of the Andes undertook a study into the degree to which businesses of all sizes in the country were affected by the conflict, and into how they responded. They found that small companies generally were not undertaking CSR for risk management reasons:

> "None of the companies undertaking a community program (16 percent) saw this as a measure to protect themselves from conflict risk. Rather, they acted on family or company tradition" (Rettberg 2008).

While large companies, in contrast, have the resources to prepare sophisticated guidelines for implementing CSR risk management strategies, many, even the largest and most impersonal, similarly believe they are making a traditional "good faith" effort to act ethically, according to Griffin. As he points out, however, why CSR proves ineffective in risk (and therefore reputation) management is because companies' opponents, critical NGOs and the media, among others, measure success on different terms; they judge success or failure based on how much of the actual problem still exists, and blame the corporation for the entire problem even where it does not have control (Griffin 2007).

Given the failures of CSR, might the language of human rights and its institutionalization provide corporations a stronger defense against their critics? It certainly might in the sense that human rights, being individual-centered, are concerned with actual outcomes on the ground for individual right-holders, thus making companies' fulfillment of their responsibilities as duty-bearers both a powerful defense against criticism and a positive talking point.[2] Human rights, from a risk/reputation management standpoint, represent a concrete way businesses can prove, according to international standards, that they are in fact being good "corporate citizens". The next section will look at one case study, Cerrejón, where human rights concerns have become integral.

Human rights training and consultation with locals: The case of Cerrejón

The Cerrejón case is a good one for illustration because it combines the responsibilities of a Colombian company with deep ties to the government, Carbones del Cerrejón, with those of its multinational partners, Anglo American, BHP Billiton and Xstrata. The strongest criticism of Cerrejón and its controlling companies has come from allegations surrounding the destruction of the village of Tabaco:

> "In August 2001, without warning, bulldozers demolished most of the neighbouring village of Tabaco, whose inhabitants were evicted and violently attacked by hundreds of armed security personnel to make way for mine expansion. This attack was followed up by another assault in January 2002, in which the rest of the village was destroyed. Anglo American and BHP Billiton have consistently denied responsibility for the destruction of Tabaco, arguing that their consortium owned 50% of the mine at the time of the attacks but did not run it. The OECD is now investigating possible breaches of its Guidelines for Multinational Enterprises in this and subsequent attempts to expand the mine" (War on Want 2007).

[2] For more on the duties and obligations of corporate citizenship see Rees and Wright, eds. (2000). *Human Rights and Corporate Responsibility: A Dialogue*. Australia: Pluto Press.

Similar to Drummond, Anglo American, BHP Billiton and Xstrata initially denied any responsibility for the Tabaco case, "arguing that their consortium owned 50% of the mine at the time of the attacks but did not run it" (Ibid). Parent companies' denying responsibility for the actions of their subsidiaries, or for those companies in which they have invested but in which they do not claim to have a controlling stake, is a common practice which also reveals that the parent company's mere adoption of a human rights code is not a magic bullet: it must still implement internal procedures to ensure that subsidiary actors, contracting parties and suppliers adhere to the same standards. In the case of Cerrejón, however, the joint venture companies faced reputational (and hard legal) pressure not only from activists, but also from the OECD who launched an investigation into "possible breaches of its Guidelines for Multinational Enterprises" against partner BHP Billiton in July 2007 for Tabaco's destruction (Ibid). The investigation sent a strong signal to Cerrejón and its partners that they needed to take action**.** Their response was to commission an independent review of Cerrejón in late August, 2007, which drew specific attention to the Tabaco incident (Social Review Panel (Salomon Kalmanovitz - Colombia 2008).

While it is difficult to determine whether pressure from the OECD led to the review, the timing makes it likely that this pressure was a triggering factor. One newspaper article analyzed this:

> "Although the OECD only has the power to rule on whether its ethical guidelines have been breached", the investigation, not necessarily the result, is what is pressuring BHP Billiton. Mr Bleechmore [a BHP Billiton spokesman] said that in February 2002, one month before the end of the forced clearing out of Tabaco, BHP Billiton and its two partners acquired ExxonMobil's 50 per cent of Cerrejón Coal, becoming the sole owners. BHP's head of community relations, Ian Wood, acknowledged there were 'legacy issues' over Tabaco, but said BHP and its partners were already working with former residents to address concerns." (Trounson 2007)

BHP, in this case, seemed to recognize more the concept of *duty* to Tabaco residents for the forced displacement resulting from Cerrejón's preexisting legacy than to address the issue in terms of a violation of rights. Human rights codes such as the Declaration on the Rights of Indigenous Peoples require the free, prior and informed consent of communities, normally in the context of indigenous groups protecting traditional lands, before companies can engage in projects on their territory (UN 2007). The independent review panel, for its part, seemed to adopt a tone of what could be done to remedy past grievances and what obligation Cerrejón and its partners had to the community, rather than analyzing what claimable rights they possessed and how these had been violated. While BHP officials did appeal to standards, claiming that they had audited Cerrejón and that it "met both BHP and World Bank standards" (Trounson 2007), these are less rigorous and lack the specificity of human rights instruments, including voluntary codes.

Clearly, Cerrejón has adopted a multi-faceted strategy to respond to the rights violations. While there is a strong emphasis on "duty" to the community and the need to engage them, the company has also given a wide range of actors human rights training, a role exceptional for a business anywhere and the only active involvement of its kind of a company in Colombia. Cerrejón proudly cites the extensiveness of its program, claiming that "the company has established a human rights and international humanitarian law training program for public security personnel and more than 2000 personnel,

including indigenous leaders and Cerrejón employees, received this training in 2006" (Social Review Panel (Salomon Kalmanovitz - Colombia 2008).

So Cerrejón has not left human rights-specific measures out of its response. Along with Occidental, Cerrejón recognizes that "human rights contribute to Cerrejón's competitivity" (Carbones del Cerrejón n.d.). While certainly meant to reassure shareholders and others that Cerrejón is not sacrificing profitability to engage in human rights training programs, this statement also may reflect a recognition that a company's ability to operate efficiently, and thus profitably in a conflict environment such as Colombia where constant security threats arise does depend on strong relations with local and state actors, which in turn can be improved by respect for human rights. Cerrejón makes the link between community relations and human rights quite clear:

> "Cerrejón is an important contributor to the local, regional and national economies. We have created more than 10,000 jobs directly and many more indirectly. Cerrejón makes a significant and beneficial contribution to the sustainable development of local communities, even in difficult circumstances, and we have established advanced practices regarding Human Rights policies" (Carbones del Cerrejón 2007)

Cerrejón's relatively proactive stance in training various actors (army, indigenous communities, etc.) in human rights, with over 2,000 trainings conducted, reflects on the human rights policies of its owner companies. As is frequently the case, responsibility falls on multinationals, with their greater resources and diversity of security situations and experiences worldwide, to ensure that subsidiaries or joint venture companies meet the parent company's own human rights standards. And in Cerrejón, the stakes are perhaps higher for a broader range of actors than in many other sites; Cerrejón is one of the world's largest coal mines and its partners face enormous exposure on human rights issues, as we will see with Anglo American.

Anglo American

While Carbones del Cerrejón has been proactive, the joint venture companies all maintain different human rights standards and some have come farther than others. The leading company, Anglo American, was one of the earliest companies to join the Extractive Industries Transparency Initiative (EITI) and views the VPs as essential to ensuring the security of their own personnel. This makes sense because, among the three parent companies responsible, Anglo American has faced pressures at other mine sites in Colombia regarding human rights, notably the assassination of two miners at an AngloGold Ashanti potential mining site in August-September 2006 (War on Want 2007). In this case, Anglo responded directly to criticism on the issue from critical NGO War on Want:

> "AngloGold Ashanti is only conducting exploration in Colombia and has no mining operations there. Absolutely no causal link has been established by War on Want as between the views of Mr Uribe or Mr Sarmiento on AngloGold Ashanti and their deaths. We wholeheartedly regret those deaths, but we are not in a position to know in what circumstances the two individuals died – indeed War on Want themselves rely only upon third party sources. We understand that AngloGold Ashanti was not even active in the area in which Mr Uribe died. A lot of weight seems to be placed on hearsay suggesting that army units were in the area to protect AngloGold Ashanti personnel. The company has contracted with the army for protection duties but these

> contractual arrangements reflect the best practice approach set out in the Voluntary Principles on Security and Human Rights" (Anglo American 2007).

The implication, as judged by a cursory reading of War on Want's report, is that Anglo American, BHP Billiton and Xstrata are somehow directly responsible both for ongoing "harassments", and for poverty in the region. The issue at hand here is whether a company is responsible for those acts that occur within its "sphere of influence" and which it does nothing or acts inadequately to stop,[3] or whether companies can legitimately claim innocence for such unfortunate occurrences if their personnel or contracted parties have no direct link to the atrocities. Some labor unions seem to think the former. For example, witness this statement by the Colombian union FEDEAGROMISBOL:

> "Colombia has a long history of paramilitary organizations linked to local elites clearing small farmers and miners off land in which multinational companies declare an interest, and intimidating those who threaten them" (War on Want 2007).

The following statement is true as far as it goes, and while not directly implicating Anglo American and others does seem to taint their overall operations in the country. Nevertheless, companies are coming to recognize the threat to their reputation such "tainting", rightly or wrongly, poses, and some, like Anglo American, have responded both with strong statements to their critics, and with comprehensive human rights policies accessible from their websites. They seem to accept that, when it comes to reputation and human rights, perception is reality.

Conclusion

> "Where an organisation appears to have responded to public pressure, how does one open up the black box of official decision making to disentangle the relative weights of the various different factors -- internal and external, ideological and interest driven -- that come into play?" (Fox 1999, 490)

In this study, all five companies considered have responded to human rights crises stemming from the Colombian conflict in different ways. Drummond chose not to view the issue in terms of its responsibility for human rights, but rather to adopt a legalistic or juridical attitude, claiming innocence of the specific charges against it. It won the case, but the legal proceedings and key witnesses' blocked attempts to testify have cast a shadow over the company. Chiquita, for its part, realized the reputational damage it was likely to suffer if facts about its complicity were ever to come to light –which given the "fog of war" in Colombia was far from certain – and made a bold gamble to preempt possible legal consequences, which it failed to do because while the Department of Justice may have cleared the company of financing a terrorist group, individual rights violations were at the core of the banana-growing community's grievances against them, and given what occurred, efforts at "social responsibility" and

[3] For one example of how companies understand the convoluted concept of "sphere of influence", see BHP Billiton's website at http://www.bhpbilliton.com/bb/sustainableDevelopment/socialResponsibility/humanRights.jsp>.

brief mentions of compliance with human rights codes, no matter how sincere, were not sufficient (Ethical Corporation 2008).

In contrast, Coca Cola and Occidental have implemented comprehensive human rights policies, in part stemming from the diversity and duration of negative experiences each has suffered over time. Shareholder activists have accused Coca Cola of everything from environmental damage, to denial of water rights to people in India, to the assassination of union workers in Colombia. While the assassinations are arguably the most serious charge and brought an ATCA suit upon Coca-Cola, the company has realized that *all* negative incidents or allegations have the potential to inflict reputational damage, even if they concern its bottlers and not the parent company directly. The company, in joining the Global Compact and BLIHR, has recognized the advantage of legitimacy and more specific risk-management strategies it receives in engaging with the human rights community. Occidental, for its part, resisted activist campaigns and lobbying by the indigenous U'wa and others for a long time before reacting to a divestment campaign against its two primary institutional investors (Grundy 2001). Once the company realized that "protecting shareholder value" and "respecting human rights" could go together, it promptly adopted a comprehensive human rights policy.

Finally, Carbones del Cerrejón and Anglo American represent best practice in the mining industry for proactively taking a range of measures to train local actors, community members, and employees in human rights. Interestingly, Cerrejón and its joint venture partners received a significant amount of criticism despite the fact that the alleged violations, the displacement of Tabaco villagers and killings of members of SINTRACARBON, were never directly linked to any of the above companies, in contrast to Drummond and Chiquita; when BHP Billiton made the claim that it did not have a controlling stake in Cerrejón, it conceivably could have enjoyed a degree of believability. Nevertheless, particularly in the mining sector, long experience from around the world has taught multinationals of the need to proactively engage local actors. And given the Colombian government's and President Uribe's strong ties to the Cerrejón site, sweeping measures might be expected; Cerrejón's adoption of comprehensive human rights policies and its owners' support for an independent panel review coincide with increased pressure on the Uribe government to respect workers' and communities' rights, or lose a coveted free trade agreement with the United States (Parks 2008).

The existence of CSR as a reputation management strategy in Colombia is still in its early stages, but important actors like Ideaspaz and the Asociación Nacional de Empresarios de Colombia (ANDI) have proposed the idea of a national forum for CSR including businesspeople, governments and multilateral organizations. The idea is that businesses have an important role to play in ending the conflict and securing peace. Though Ideaspaz is not yet directing attention towards specific allegations that companies are complicit in rights violations (Rivas 2008), projects like the Colombia Guidelines, which are based on the VPs and involve both national/international actors and different sectors of society, may show promise in achieving wide spread "buy-in" for such discussions (Business & Human Rights Resource Centre April 2008).

Going forward, it is important for human rights practitioners who wish to engage with the private sector, especially with large, bureaucratic multinationals, to offer arguments as to why their adoption of voluntary human rights codes and standards is useful from a business standpoint; central to businesses' assessment of this will be whether such codes reduce actual or perceived reputational, operational or financial risk related to human rights. The human rights community, for its part, should not fear the "merger and acquisition" of rights language by the international economic order, as Alston has argued (Alston 2002), but rather realize that human rights are a socially, economically and politically constructed phenomenon that are useful only insofar as they meet the advocacy needs of divergent groups (Moon 2007). Human rights are only one language among many that seeks to give precision and expression to the universal goal of ensuring human dignity; while business activity is amoral, it is not necessarily immoral nor are the individuals that run companies and the shareholders that back them financially (Goodpaster 1982).

As such, practitioner efforts that seek to connect companies' historical experiences and the negative consequences of these – especially related to legal or shareholder consequences – to a human rights framework, and then to propose the adoption and implementation of voluntary codes as a reputational solution, are likely to achieve more than antagonistic campaigning ever could. And some NGOs are finally beginning to make this connection between moral arguments within the framework of human rights, and shareholder value; the NGO SustainAbility, for example, coined the term "moral liability" in 2004 to describe directors' and CEOs' liability to society's expectations, built on a twenty-year case history of corporate disasters (SustainAbility 2004). While companies may not wish to credit the NGO sector with these important innovations in how they do risk and liability management, they must take such insights, including human rights, on board if they are to be successful in the 21st Century.

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Tables

Table 1: Adoption of human rights codes and policies by multinationals operating in Colombia

Drummond	No	No	No	No	Some CSR
Chiquita	No	N/A	No	"Respect for human rights" in Code of Conduct	SA 8000, Ethical Trading Initiative, Extensive CSR
Coca Cola	Yes	N/A	No	Yes	Sullivan Principles*, Extensive CSR
Occidental	No	No	Yes	Yes	Sullivan Principles, extensive CSR
Carbones del Cerrejón	Yes	N/A	N/A	Yes	Extensive CSR
Anglo American	Yes	Yes	Yes	Yes	Socio-Economic Assessment Toolbox (SEAT)**, Extensive CSR
BHP Billiton	Yes	Yes	Yes	Yes	HSEC Standards**, Extensive CSR

Sources: Voluntary Principles (VPs) website (http://www.voluntaryprinciples.org) ; Global Sullivan Principles website (http://www.thesullivanfoundation.org/gsp/default.asp) ; company websites (listed in Bibliography); Business & Human Rights Resource Centre website (www.business-humanrights.org) for UN Global Compact participation information; Extractive Industries Transparency Initiative (EITI) website (http://eitransparency.org)

*The Global Sullivan Principles are a set of Corporate Responsibility principles built on human rights, social justice and economic opportunity. http://www.thesullivanfoundation.org/gsp/default.asp

**SEAT and HSEC are sets of ethical, environmental and other standards designed to guide the implementation of company goals of human rights, strong community relations, etc.

Table 2: Pressures on multinationals operating in Colombia

Drummond	0	Yes	March 12, 2001	No	Weak
Chiquita	0	Pending?	1997-2003**	Not directly**	Moderate
Coca Cola	11	Yes	3 killings (2004-2006)***	No	Strong
Occidental	2*	Yes	Dec. 1998	(oil extraction on U'wa land, dispute ongoing since 1990s)	Strong
Carbones Del Cerrejón	0	N/A	No	August 2001, January 2002	Moderate/Strong
Anglo American	0	N/A	No	--	--
BHP Billiton	0	N/A	No	--	--

Sources: Interfaith Center on Corporate Responsibility (ICCR) website (www.iccr.org); Business & Human Rights Resource Centre website (www.business-humanrights.org) ; News reports on companies (see Bibliography)

Note: Table only refers to allegations against companies regarding their or their subsidiaries'/partners' operations from 1997 onward and applies only to Colombia. "Media attention" is a holistic assessment of the breadth and depth of news coverage against the severity of the allegations made.

*Number does not include divestment campaigns against Oxy investors Bernstein/Alliance Capital and Fidelity.

**Period during which Chiquita made "protection payments" and paramilitaries in the region killed and displaced locals; no direct link established as of yet between Chiquita's financing, and these rights violations.

***Killings allegedly perpetrated by Coca Cola's Colombian bottling partner Panamco. See Amnesty International Report "Colombia: Killings, Arbitrary Detentions, and Death Threats"
http://www.amnesty.org/en/library/info/AMR23/001/2007