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Crime wars: Operational perspectives on criminal armed groups in Mexico and Brazil

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Abstract
Violent conflicts involving non-State armed groups challenge conventional perceptions of war and armed conflict. Criminal enterprises (transnational organized criminal groups including gangs and cartels) are involved in violent competition for both profit and territorial control in many parts of the world. This paper examines the situation in Mexico and Brazil as case studies to assess the legal challenges to criminal armed violence when criminal groups battle among themselves and the State. The paper focuses on the operational challenges and considerations facing police, military, and security forces and justice institutions to illuminate the legal challenges.

Keywords: criminal armed groups, non-State armed groups, crime wars, criminal insurgencies, non-international armed conflicts.

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Introduction

Violent conflicts involving non-State armed groups challenge conventional perceptions of war and armed conflict. Criminal enterprises (transnational organized criminal groups including gangs and cartels) are involved in violent competition for both profit and territorial control in many parts of the world. This phenomenon has been viewed as both crime wars and criminal insurgencies. These conflicts span a range of intensity from simple sporadic criminal violence and civil strife to complex sustained non-ideological assaults on the State by criminal armed groups (CAGs). When these conflicts gain operational sophistication, the CAGs can directly confront the State, erode State legitimacy and capacity (collectively, State solvency) and gain *de facto* political power. This power includes both freedom of action and territorial control, challenging the State's monopoly of violence and fuelling State transition.

This paper examines the situation in Mexico and Brazil as case studies to assess the legal challenges to criminal armed violence when criminal groups battle among themselves and the State with sustained levels of intensity and organization, potentially reaching the threshold of non-international armed conflict (NIAC). The paper focuses on the operational challenges and considerations facing police, military, and security forces and justice institutions to illuminate the legal challenges.

Using Mexico and Brazil as case studies, this paper reviews the violent situations in those States through the conceptual lens of crime wars and criminal insurgencies. Specifically, it examines the challenges of violent competition seen in Mexico's criminal conflicts and among gangs, militias and the State in Brazil. In addition, it assesses the intensity of violence and organizational characteristics of the criminal enterprises involved, as well as their use of *narcocultura* and social modification to meet their objectives. The paper further uses these cases to illustrate humanitarian considerations and advanced tactics, techniques and procedures (TTPs) employed by these CAGs, and briefly looks at how COVID-19 amplified criminal governance. Finally, controversies in categorizing conflict in these crime wars are discussed. These factors are discussed in order to illustrate the complexity of high-intensity criminal violence and the difficulty that States face when addressing these situations.

Crime wars and criminal insurgency

Contemporary conflict often involves a range of warring factions in addition to traditional State actors. These include drug cartels, criminal gangs, militias and terrorists, in addition to military organizations.[1] In this paper, crime wars or

1 Robert Muggah and John P. Sullivan, "The Coming Crime Wars", *Foreign Policy*, 21 September 2018, available at: https://foreignpolicy.com/2018/09/21/the-coming-crime-wars/ (all internet references were

criminal insurgencies are at the centre of criminal competition with States. Insecurity and violence are at the core of public concern, yet deeper threats to States include corruption, impunity and criminal governance.[2] As we will see, there is still no common lexicon for this type of conflict at the intersection between crime and war; indeed, many prefer to view it as high-intensity organized crime rather than conflict.[3] Crime wars refer to the broad range of criminal conflicts, while criminal insurgency refers to the influence of criminal conflicts and criminal governance on States and interstate institutions.[4]

The actors in these conflicts include gangs, militias, mafias and drug cartels on one side and State security services, police and the military (and intelligence) on the other. In between are corrupt politicians and the various communities terrorized by the violent competition among players for competitive control. Various gangs interact within the criminal networks involved in this conflict landscape. These include small local or street gangs engaged in retail drug sales or working as proxies for larger criminal enterprises or cartels, larger market-based gangs that form alliances or provide services to the mafias and cartels, and, finally, sophisticated transnational territorial or "third-generation" gangs that bridge the gap between traditional gangs and mafia or cartels. These territorial gangs can present themselves as "gangs" or as "militias". Many militias, such as the *milicias* in Brazil, started as vigilante or enforcement entities intended to suppress gangs and criminal violence but found the profits from the activities that they sought to suppress attractive and lucrative.

The constellation of gangs ranges from "first-generation" turf gangs, to "second-generation" market gangs and, finally, "third-generation" gangs with mercenary and political aims and attributes.[5] In Brazil, the more sophisticated gangs (*gangues* or *quadrilhas*) and militias (*milícias*) are often referred to as territorial gangs (*gangues territoriais*) since they can sustain effective control of specific neighbourhoods or *favelas* (slums).[6] In many cases, the distinction

accessed in August 2022); Hal Brands, "Third-Generation Gangs and Criminal Insurgency in Latin America", *Small Wars Journal*, 4 July 2009, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-and-criminal-insurgency-in-latin-america; Hal Brands, "Gangs and the New Insurgency in Latin America", *World Politics Review*, 10 June 2009, available at: www.worldpoliticsreview.com/articles/3882/gangs-and-the-new-insurgency-in-latin-america.

2 John P. Sullivan, "From Drug Wars to Criminal Insurgency: Mexican Cartels, Criminal Enclaves and Criminal Insurgency in Mexico and Central America. Implications for Global Security", *Working Paper No. 9*, Fondation Maison des sciences de l'homme, Paris, April 2012, available at: https://halshs.archives-ouvertes.fr/halshs-00694083/document.

3 Robert J. Bunker, "Introduction: The Mexican Cartels – Organized Crime vs. Criminal Insurgency", *Trends in Organized Crime*, Vol. 16, 2013, especially Table 1, available at: https://link.springer.com/article/10.1007/s12117-013-9194-4.

4 John P. Sullivan and Robert J. Bunker, "Rethinking Insurgency: Criminality, Spirituality, and Societal Warfare in the Americas", *Small Wars & Insurgencies*, Vol. 22, No. 5, 2011.

5 John P. Sullivan, "Third Generation Street Gangs: Turf, Cartels and NetWarriors", *Transnational Organized Crime*, Vol. 3, No. 2, Autumn 1997; John P. Sullivan and Robert J. Bunker (eds), *Strategic Notes on Third Generation Gangs*, Xlibris, Bloomington, IN, 2020.

6 John P. Sullivan, "The Challenges of Territorial Gangs: Civil Strife, Criminal Insurgencies and Crime Wars", *Revista Do Ministério Público Militar (Brasil)*, Vol. XLIV, No. 31, November 2019, available at: https://revista.mpm.mp.br/artigo/the-challenges-of-territorial-gangs-civil-strife-criminal-insurgencies-and-crime-wars/.

between crime and conflict complicates approaches to containing gang violence. In most cases, gangs, while a chronic criminal threat, do not rise to the level of NIAC and demand a different lens for crafting legal and policy responses.[7] In an era where some gangs exercise territorial control, perform criminal governance and directly confront the State and its institutions, the interaction between criminal enterprises and States deserves an ongoing assessment and evaluation. After all, some Latin American armed groups, such as Brazil's Primeiro Comando da Capital (PCC), are expanding across borders.[8] They are also building links with other transnational criminal organizations, for example with 'Ndrangheta.[9] In some cases, they create virtual extraterritorial "criminal enclaves" such as the Tri-Border Area at the confluence of Brazil, Paraguay and Argentina.[10]

Traditionally, criminal enterprises, such as gangs and cartels, sought to avoid confrontation with the State in order to maximize profit generated from the illicit and grey economies. This preference was examined by John Bailey and Matthew Taylor in their 2009 paper "Evade, Corrupt, or Confront?". In that assessment, they noted that criminal enterprises seek to evade and elude detection from police and judicial authorities. When they cannot evade, they then seek to corrupt public officials to sustain their criminal activity. When that fails, they may opt to directly confront the State.[11] In these cases, the equilibrium between the State and organized crime is broken.[12] This can be characterized as part of a "crime–conflict nexus".[13] The tactical and operational manifestations of the violence and conflict that follows the broken equilibria in Mexico and Brazil is exemplary of the challenges faced when CAGs embrace violent competition.

7 Jennifer M. Hazen, "Understanding Gangs as Armed Groups", *International Review of the Red Cross*, Vol. 92, No. 878, 2010, available at: https://international-review.icrc.org/articles/understanding-gangs-armed-groups.

8 Jonathan Franklin, "Can Anyone Stop Brazil's PCC?", *Americas Quarterly*, 16 January 2018, available at: www.americasquarterly.org/fulltextarticle/can-anyone-stop-brazils-pcc/; Becky Kohler da Cruz and José de Arimatéia da Cruz, "Brazil's Transnational Organized Crime (TOC) and its National Security Implications", *Small Wars Journal*, 26 November 2013, available at: https://smallwarsjournal.com/jrnl/art/brazils-transnational-organized-crime-toc-and-its-national-security-implications.

9 Bryan Harris, "How Brazil's Largest Crime Syndicate Built a Global Drug Empire", *Financial Times*, 28 February 2022, available at: www.ft.com/content/20fb5c77-baf1-45ab-a886-51cac68cfd4e.

10 Pablo A. Baisotti, "The Triple Border, a Criminal Haven", *Small Wars Journal*, 12 November 2021, available at: https://smallwarsjournal.com/jrnl/art/triple-border-criminal-haven; John P. Sullivan, "Criminal Enclaves: When Gangs, Cartels or Kingpins Try to Take Control", *Stratfor Threat Lens*, 10 July 2019, available at: www.academia.edu/39800892/Criminal_Enclaves_When_Gangs_Cartels_or_Kingpins_Try_to_Take_Control; John P. Sullivan and Robert J. Bunker, "Drug Cartels, Street Gangs, and Warlords", *Small Wars & Insurgencies*, Vol. 13, No. 2, 2002, available at: www.academia.edu/36483305/Drug_Cartels_Street_Gangs_and_Warlords.

11 John Bailey and Matthew M. Taylor, "Evade, Corrupt, or Confront? Organized Crime and the State in Brazil and Mexico", *Journal of Politics in Latin America*, Vol. 1, No. 2, 2009, available at: www.casede.org/BibliotecaCasede/38-38-1-PB.pdf.

12 John P. Sullivan, "How Illicit Networks Impact Sovereignty", in Michael Miklaucic and Jacqueline Brewer (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization*, National Defense University Press, Washington, DC, 2013, available at: https://ndupress.ndu.edu/Portals/68/Documents/Books/convergence.pdf.

13 John de Boer and Louise Bosetti, "The Crime–Conflict 'Nexus': State of the Evidence", *Occasional Paper 5*, United Nations University Centre for Policy Research, New York, July 2015, available at: https://collections.unu.edu/eserv/UNU:3134/unu_cpr_crime_conflict_nexus.pdf.

The challenges of violent competition

The challenges to States when CAGs embrace violence as a means of securing their position in the illicit global economy and its local nodes include endemic insecurity, decreased public confidence in governance by the State and its institutions – especially the police, the judiciary and local government such as mayors and state (provincial) governors. Essentially the States lose legitimacy as the CAGs gain control. The CAGs use violence as a form of "violent lobbying" (including "violent corruption") to exert their influence and gain power and profit.[14] This violence can be "symbolic" to shape community perceptions of the criminal enterprise or "instrumental" to meet a specific operational or political objective, such as removing an obstacle through assassinating a rival gangster, mayor or journalist, or similar violence targeted at those opposing the group's activity.[15]

Some of the cartels and gangs (CAGs) operating in Mexico and Brazil have reached a level of violent activity where they utilize sophisticated weapons and tactical operations. In these cases, they are effectively "militarised criminal networks".[16] The TTPs used by the cartels in Mexico, for example, include drive-by shootings, car bombs and grenades, armed assaults, kidnapping, blockades (*narcobloqueos*), and attacks on police, journalists, political figures (mayors and electoral candidates), judges and prosecutors. They also employ information operations (including the use of social media and *narcomantas* or banners to spread their message) and corpse-messaging or displaying symbols on the bodies of their rivals (along with other forms of dismemberment and beheadings).[17] They also use intelligence, including look-outs or *halcones*, and surveillance – including video surveillance with their own closed-circuit television (CCTV) and radio networks for urban territorial control.[18] Gangs in Brazil often use prisons as a base of operations, conduct high-intensity bank robberies and have conducted

14 Benjamin Lessing, "Logics of Violence in Criminal War", *Journal of Conflict Resolution*, Vol. 59, No. 8, 2015.

15 John P. Sullivan, "Criminal Insurgency: Narcocultura, Social Banditry, and Information Operations", *Small Wars Journal*, 3 December 2012, available at: https://smallwarsjournal.com/jrnl/art/criminal-insurgency-narcocultura-social-banditry-and-information-operations.

16 Alexander Elfes, "Militarised Criminal Networks and the Challenges They Present to the Military and Police", *Small Wars Journal*, 10 July 2020, available at: https://smallwarsjournal.com/jrnl/art/militarised-criminal-networks-mexico-and-challenges-they-present-military-and-police.

17 Sylvia M. Longmire and John P. Longmire, "Redefining Terrorism: Why Mexican Drug Trafficking is More than Just Organized Crime", *Journal of Strategic Security*, Vol. 1, No. 1, 2010, available at: https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1044&context=jss; Chris Dalby, "How Mexico's Cartels Have Learned Military Tactics", *InSight Crime*, 2 September 2022, available at: https://insightcrime.org/news/how-mexicos-cartel-have-learned-military-tactics/.

18 John P. Sullivan and Adam Elkus, "Tactics and Operations in the Mexican Drug War", *Infantry Magazine*, September–October 2011, available at: www.academia.edu/12571867/Tactics_and_Operations_in_the_Mexican_Drug_War; Robert J. Bunker and John P. Sullivan, "Cartel Car Bombings in Mexico", *The LeTort Papers*, Strategic Studies Institute and US Army War College Press, Carlisle, PA, 1 August 2013, available at: https://ssi.armywarcollege.edu/2013/pubs/cartel-car-bombings-in-mexico/; Robert J. Bunker, "Cártel del Golfo (CDG) CCTV Cameras Seized in Ciudad Valles, San Luis Potosí", *C/O Futures Cartel Research Note Series*, 7 November 2021, available at: www.cofutures.net/post/cártel-del-golfo-cdg-cctv-cameras-seized-in-ciudad-valles-san-luis-potos%C3%AD.

terrorist or "quasi-terrorist" attacks on civil infrastructure, including buses, police stations and other infrastructure.[19]

Mexico's criminal conflicts

This section briefly discusses the origins of Mexico's criminal conflicts. It provides an overview of the key players: cartels and gangs (that essentially become CAGs). Emphasis is placed on the two major organizations: the Cártel de Sinaloa (CDS; Sinaloa Cartel) and the Cártel de Jalisco Nueva Generación (CJNG).[20] This section also provides a brief introduction into their operations, including those beyond drug trafficking.

Background on the conflict

The criminal conflicts in Mexico challenge the Mexican State (at all levels: municipal, state and federal). They involve violent competition between criminal enterprises (gangs and cartels), extreme violence, insecurity, and high degrees of corruption and impunity. These factors are spread unevenly throughout the nation and have transnational dimensions. The situation is often referred to as a drug war due to the conflicts over the lucrative drug trafficking business and competition over control of the *plazas* (transshipment points) and lines of communication by the various drug cartels and their composite or subordinate gangs. Mexico launched a "war" against drug cartels in 2006 under the *sexenio* or six-year term of Felipe Calderón Hinojosa. The drug war has left over 300,000 persons dead and continues despite a series of government crackdowns under three administrations (Calderón, 2006–2012; Enrique Peña Nieto, 2012–2018; and Andrés Manuel López Obrador, 2018–present).[21] In addition, there are at least 357,000 internally displaced persons from criminal battles for territorial control in Mexico as of December 2020.[22]

Mexico's organized crime problem is considered one of the most significant one in the world, with a high degree of criminality and a low degree of societal

19 John P. Sullivan and Robert J. Bunker (eds), *Competition in Order and Progress: Criminal Insurgencies and Governance in Brazil*, Xlibris, Bloomington, IN, 2022.

20 These are currently the main protagonists in Mexico's crime wars. See Nathan P. Jones, Irina A. Chindea, Daniel Weisz Argomedo and John P. Sullivan, "Mexico's 2021 Dark Network Alliance Structure: An Exploratory Social Network Analysis of *Lantia Consultores*' Illicit Network Alliance and Subgroup Data", Research Paper, Rice University's Baker Institute, Houston, TX, 11 April 2022, available at: www.bakerinstitute.org/research/mexicos-2021-dark-network-alliance-structure-an-exploratory-social-network-analysis-of-lantia-consul.

21 Council on Foreign Relations, "Mexico's Long War: Drugs, Crime, and the Cartels", 26 February 2021, available at: www.cfr.org/backgrounder/mexicos-long-war-drugs-crime-and-cartels.

22 Andrew I. Rudman, "Mexico's Internally Displaced are an Unrecognized Migration Crisis", *The Hill*, 5 October 2021, available at: https://thehill.com/opinion/international/575310-mexicos-internally-displaced-are-an-unrecognized-migration-crisis/.

resilience to cope with the situation.[23] At least 250 mayors and local politicians have been murdered between 2006 and November 2020, a rate at least four times that of a member of the local population.[24] Police are also targeted, with 525 police killed in 2020, an average of 1.24 murders daily, which is five times more likely than for members of the local population that they serve. Municipal police were at the greatest risk (53.4%), followed by state officers (41.4%), with federal officers representing the smallest percentage (6.2%).[25] Journalists are also at risk, with Mexico being one of the most dangerous places on the globe for reporters and media workers, according to the Committee to Protect Journalists (CPJ):

> From 1992 through 2020, CPJ reported that there were 57 confirmed cases of journalists killed, 68 unconfirmed cases, and four cases of media-support workers killed in Mexico. Nearly 80% of confirmed cases involved reporters working the crime beat, 46% involved reporters working on political issues, and approximately 37% involved reporters working on issues related to corruption. In 2020, nine journalists were killed in Mexico, making it the country with the greatest number of cases for that year.[26]

The "Drug War" began in 2006 with a large-scale deployment of federal troops to Michoacán; the deployment known as "Operation Michoacán" brought federal military, police and prosecutors to the region to counter territorial control by cartels.[27] Their initial cartel targeted was La Familia Michoacana. As the protracted struggle continued, additional cartels got involved, including the Knights Templar (Los Caballeros Templarios), Los Viagras, Los Zetas, elements affiliated with the CDS, Cárteles Unidos, and the CJNG. Like other parts of Mexico, the conflict has morphed, yet it persists today as a complex mix of *narcopolitica* (narcopolitics) or the influence of politics in furtherance of the drug trade, criminal violence and (para) military competition for territorial control.[28]

23 Global Initiative Against Transnational Organized Crime, *The Global Organized Crime Index 2021*, Geneva, available at: https://globalinitiative.net/analysis/ocindex-2021/.

24 Laura Y. Calderón, Kimberly Heinle, Rita E. Kuckertz, Octavio Rodríguez Ferreira and David A. Shirk (eds), *Organized Crime and Violence in Mexico: 2021 Special Report*, Justice in Mexico, University of San Diego, San Diego, CA, October 2021, pp. 31–2, available at: https://justiceinmexico.org/wp-content/uploads/2021/10/OCVM-21.pdf.

25 *Ibid*., p. 34.

26 *Ibid*., quote from CPJ, "49 Journalists Killed", at p. 35.

27 The agencies deployed were the Policía Federal (Federal Police, now Guardia Nacional), the Procuraduria General de la Republica (PGR, Attorney General's Office, now the Fiscalía General de la República, FGR), Subprocuraduría Especializada en Investigación de Delincuencia Organizada (SEIDO; Assistant Attorney General's Office for Special Investigations on Organized Crime), Mexican Army (Ejercito, Secretaría de Defensa Nacional; SEDENA) and the Mexican Navy (Marina, Secretaría de la Marina; SEMAR).

28 Vanda Felbab-Brown, "Criminal Violence, Politics, and State Capture in Michoacán", *Brookings*, 24 September 2021, available at: www.brookings.edu/opinions/criminal-violence-politics-and-state-capture-in-michoacan/.

Current major players and operations

The Mexican Drug War is currently dominated by the CDS and the CJNG. The CDS, also known as the Guzmán-Loera Organization or Federation, rose in the late 1980s from the seeds of the Guadalajara "Cartel".[29] The CDS, like most other cartels, is a multi-crime organization involved in many enterprises in addition to narcotrafficking. The CDS has been accused of corrupt interactions with elements of the Mexican government and currently operates in at least seventeen Mexican states.[30]

The CDS has transitioned from a cartel to a paramilitary group where its *sicarios* and *gatilleros* (foot soldiers) employ violence to protect and extend the cartel's interests.[31] While the CDS is traditionally viewed as a "transactional" entity, it has increasingly adopted a "territorial" emphasis.[32] This transition can be best seen in the 17 October 2019 "Battle of Culiacán" where CDS *gatilleros* thwarted Guardia Nacional (National Guard) efforts to capture "El Chapo's" son Ovidio Guzmán López on a US extradition warrant. Up to 700 cartel gunmen countered the warrant service, surrounding the government forces, instituting blockades that canalized responding forces into indefensible "kill zones", and attacking civilian, government and military targets throughout the city. The cartel commandos were equipped with armoured vehicles (improvised armoured fighting vehicles (IAFVs)), .50 calibre anti-materiel rifles, grenades, rocket launchers and machine guns. The CDS forces coordinated activities using radios for command and control and cartel-operated video monitors.[33] Mexico's

29 The so-called Guadalajara Cartel was known for establishing the plaza system from which many major cartels in Mexico are descended. It was led by Miguel Ángel Félix Gallardo who is also implicated in the murder of US Drug Enforcement Administration (DEA) agent Enrique "Kiki" Camarena. Félix Gallardo denies responsibility but was convicted for the murder in 2017. See Issa Osorio, "Guadalajara Drug Cartel Founder, in First Interview, Talks About Murdered DEA Agent", *NBC News*, 19 August 2021, available at: www.nbcnews.com/news/latino/guadalajara-drug-cartel-founder-first-interview-talks-murdered-dea-age-rcna1715; Carlos Pérez Ricart and Jack Pannell, "The Guadalajara Cartel Never Existed", Noria Research, Paris, November 2021, available at: https://noria-research.com/the-guadalajara-cartel-never-existed/. Camarena's assassination is arguably the first political assassination of the drug war. See Laura Ross Blume, "The Old Rules No Longer Apply: Explaining Narco-Assassinations of Mexican Politicians", *Journal of Politics in Latin America*, Vol. 9, No. 1, 2017, available at: https://journals.sagepub.com/doi/10.1177/1866802X1700900103. The CDS was led by "El Chapo" Joaquin Guzmán Loera, who is now incarcerated in the United States, who founded it along with "El Mayo" Ismael Zambada García, its current leader.

30 InSight Crime, "Sinaloa Cartel", 4 May 2021, available at: https://insightcrime.org/mexico-organized-crime-news/sinaloa-cartel-profile/.

31 Javier Valdez Cárdenas, *The Taken: True Stories of the Sinaloa Drug War*, University of Oklahoma Press, Norman, OK, 2017; Alejandro Santos Cid, "An Inside Look at Mexico's Sinaloa Cartel", *El País*, 16 February 2022, available at: https://english.elpais.com/international/2022-02-16/an-inside-look-at-mexicos-sinaloa-cartel.html.

32 Nathan P. Jones, *Mexico's Illicit Drug Networks and the State Reaction*, Georgetown University Press, Washington, DC, 2016.

33 Scott Neuman and Carrie Kahn, "Massive Gun Battle Erupts In Mexico Over Son Of Drug Kingpin 'El Chapo'", *NPR*, 18 October 2019, available at: www.npr.org/2019/10/18/771216750/massive-gun-battle-erupts-in-mexico-over-son-of-drug-kingpin-el-chapo; Andréa Schmidt, "The Weekly: Episode 20: 'The Siege of Culiacán'", *New York Times*, 8 December 2019, available at: www.nytimes.com/2019/11/15/the-weekly/el-chapo-guzman-son.html; Jorge Monroy, "Y la entidad, con al menos 8,000 soldados,

National Defence Secretariat deployed 230 military personnel to reinforce security in Culiacán, bringing the total municipal, state and federal security deployment to 8000 after over 700 cartel gunmen forced the release of Ovidio Guzmán López.[34]

The CJNG employs stark tactics. In the current phase of the conflict, the CJNG has shot down military helicopters, ambushed high-level politicians in Mexico City and attacked a rival group (Cárteles Unidos, comprised of the remnants of now-defunct cartels and vigilante groups). The CJNG has waged an offensive against the town of Tepalcatepec using infantry tactics rather than traditional criminal assassinations by *sicarios* (hitmen) in a demonstration of its territorial aspirations.[35] The CJNG is currently one of the main criminal protagonists in Mexico's crime wars. Its main rival is the CDS.

The CJNG is arguably the most powerful criminal contender today. The CJNG first appeared as the "Matazetas" (Zeta Killers) in 2009 and then through a series of dramatic massacres established dominance throughout its operational area (including its base in Jalisco). By 2015, it had largely replaced the Los Zetas as the CDS's primary rival, while embracing the Zetas' violent and often brutal tactical repertoire.[36] In May 2015, the CJNG conducted a siege of Guadalajara with thirty narco-blockades, shooting down a military Cougar EC725 helicopter. In 2017, they began an intense conflict with the Cártel de Santa Rosa de Lima (CSRL) in Guanajuato, and, in August 2019, they massacred nineteen members of Los Viagras to exert control over the avocado trade.[37]

The CJNG employs armed commandos, uses *narcotanques* (IAFVs), has used aerial propaganda drops to threaten the CDS and residents that support them, kidnapped and killed police, and embraced higher-capability weapons in its quest for relative superiority over other cartels and freedom of movement from the State.[38] The CJNG is also pioneering the use of drones, landmines and combined-arms capabilities.

Other groups still persist, including remnants of the Zetas, once a dominant innovator of violence, and the Cártel del Golfo (Gulf Cartel). The Zetas started as an enforcer group for the Gulf Cartel and split from that group in 2010 (although the process of separation probably began earlier, in 2003).[39] The Zetas were notable for their intense violence, military orientation and barbarization. At their zenith they waged a "war of all against all", seeking control of the *plazas* in Monterrey,

policías y de la GN", *El Economista*, 21 October 2019, available at: www.eleconomista.com.mx/politica/Y-la-entidad-con-al-menos-8000--soldados-policias-y-de-la-GN-20191020-0059.html.

34 J. Monroy, *ibid.*

35 *Ibid.*

36 START, "Tracking Cartels Infographic Series: The Violent Rise of Cártel de Jalisco Nueva Generación (CJNG)", START National Consortium for the Study of Terrorism and Responses to Terrorism, available at: www.start.umd.edu/tracking-cartels-infographic-series-violent-rise-c-rtel-de-jalisco-nueva-generaci-n-cjng.

37 *Ibid.*

38 Luis Chaparro, "The Jalisco Cartel is Dropping Death Threats From the Skies", *Vice*, 10 March 2022, available at: www.vice.com/en/article/bvn3ea/cjng-cartel-planes-death-threat-flyers.

39 Samuel Logan and John P. Sullivan, "The Gulf-Zeta Split and the Praetorian Revolt", *ISN, ETH Zürich*, 7 April 2010, available at: https://css.ethz.ch/en/services/digital-library/articles/article.html/114551.

Matamoros, Reynosa and Nuevo Laredo to dominate the United States–Mexico border zone.

The core of the Zetas' ethos was fear; indeed, their debut as a separate entity on the criminal stage began with the kidnapping of two police in Acapulco accompanied by the *narcomanta* (banner) "*Para que aprendan a respetar*" ("So you learn to respect us").[40] In one major engagement, skirmishes between a caravan of as many as twenty Zeta vehicles in Reynosa, Nuevo Laredo, and Ciudad Mier against rival CDG vehicles (marked with cartel insignia) left dozens dead and reportedly resulted in the kidnapping of ten municipal police officers. The Zetas were engaged in drug trafficking, human trafficking, product piracy, and petroleum theft or *huachicoleo*.[41] The Zetas are essentially military-trained gang members, with their original cadre of thirty-one commandos formed by defectors from the Mexican Army's Airborne Special Forces Group (Grupo Aeromóvil de Fuerzas Especiales (GAFES)). They have fragmented themselves into the Zetas Vieja Escuela (Old School Zetas) and Cártel Noreste (CDN; Northeast Cartel), functioning along the United States–Mexico frontier.[42]

Another rival of the CJNG, the CSRL in Guanajuato, was largely involved in *huachicoleo* or illicit petroleum trade.[43] Its leader "El Marro" José Antonio Yépez Ortiz was a bitter rival of "El Mecho". Both the CSRL and CJNG sought to control the hydrocarbon trade in the Triángulo Rojo (Red Triangle) of Guanajuato comprised of the contested cities of Salamanca, Irapuato and Celaya.[44] The CSRL utilized subterranean (tunnel) operations to conduct its illicit taps on oil pipelines and as a means of evacuating the area to elude pursuit by government forces and rival cartels.[45] The CSRL also filmed their actions with GoPro video cameras for use in propaganda and to conduct tactical debriefings.[46]

40 Steven Dudley, "The Zetas' Model of Organized Crime is Leaving Mexico in Ruins", *InSight Crime*, 30 August 2021, available at: https://insightcrime.org/news/zetas-model-organized-crime-mexico-ruins/.

41 *Ibid.*

42 Parker Asmann, "Mexico's Zetas: From Criminal Powerhouse to Fragmented Remnants", *InSight Crime*, 6 April 2018, available at: https://insightcrime.org/news/analysis/mexico-zetas-criminal-powerhouse-fragmented-remnants/; Guadalupe Correa-Cabrera, *Los Zetas Inc.: Criminal Corporations, Energy, and Civil War in Mexico*, University of Texas Press, Austin, TX, 2017.

43 Nathan P. Jones and John P. Sullivan, "Huachicoleros: Criminal Cartels, Fuel Theft, and Violence in Mexico", *Journal of Strategic Security*, Vol. 12, No. 4, 2019, available at: https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1742&context=jss; International Crisis Group, "Keeping Oil from the Fire: Tackling Mexico's Fuel Theft Racket", *Latin America Briefing No. 46*, Mexico City/New York/Brussels, 25 March 2022, available at: https://d2071andvip0wj.cloudfront.net/b046-mexico-fuel-theft.pdf.

44 Robert J. Bunker and John P. Sullivan, "Mexican Cartel Tactical Note #41: Cártel Santa Rosa de Lima (CSRL) Logo and Symbols Identification", *Small Wars Journal*, 3 April 2019, available at: https://smallwarsjournal.com/index.php/jrnl/art/mexican-cartel-tactical-note-41-cartel-santa-rosa-de-lima-csrl-logo-and-symbols.

45 John P. Sullivan and Robert J. Bunker, "Mexican Cartel Tactical Note #40: Cártel Santa Rosa de Lima (CSRL) Tunnels in Guanajuato Highlights Tactical Considerations in Underground Operations", *Small Wars Journal*, 22 March 2019, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-tactical-note-40-cartel-santa-rosa-de-lima-csrl-tunnels-guanajuato.

46 Robert J. Bunker, Alma Keshavarz and John P. Sullivan, "Mexican Cartel Tactical Note #39: GoPro Video Social Media Posting of Cártel Santa Rosa de Lima (CSRL) Tactical Action Against Cártel Jalisco Nueva Generación (CJNG) in Guanajuato – Indications & Warning (I&W) Concerns", *Small Wars Journal*, 5 March 2019, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-tactical-note-39-gopro-video-social-media-posting-cartel-santa-rosa-de-lima.

Both the CSRL and CJNG employed explosive artifacts and simulated car bombs as threat vehicles in their violent competition with each other and the State.[47] The CJNG and CSRL's use of car bombs is rare, yet echoes the car bombing in Ciudad Juárez of 15 June 2010. In addition to that primitive car bomb – which killed four persons and targeted police – twenty-one car bomb incidents have been identified in Mexico in the period of 14 July 2008–31 July 2012.[48] The CJNG also used a car bomb in Colombia and used a remotely detonated car bomb in Apaseo el Alto, Guanajuato, both in 2020.[49] Now we turn to Brazil to examine the situation there.

Gangs, militias and the State in Brazil

In this section the criminal conflict situation in Brazil is examined. After a brief introduction describing the use of high-intensity crime and violence by the PCC, current operations, including brigandage (as expressed in what is called the new or *Novo Cangaço*), as well as criminal enclaves and criminal governance, as a form of competitive control, are described to illustrate the challenges States face when encountering "territorial gangs".[50]

High-intensity crime

Brazil's *facções criminosas* (criminal factions), *gangues* or *quadrilhas* (gangs), and *milícias* (militias) compete with the Brazilian State, creating insecurity in their quest for competitive control. The aforementioned PCC dominates Brazil's prisons and many *favelas*. In an effort to secure its freedom of action, it has repeatedly lashed out against State interference. In a notable early example, it initiated a wave of violence in São Paulo, killing 150 people (a quarter of the toll

47 John P. Sullivan and Robert J. Bunker, "Mexican Cartel Strategic Note No. 27: Confronting the State – Explosive Artifacts, Threats, Huachicoleros, and Cartel Competition in Guanajuato, MX", *Small Wars Journal*, 14 March 2019, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-strategic-note-no-27-confronting-state-explosive-artifacts-threats; Robert J. Bunker, John P. Sullivan, David A. Kuhn and Alma Keshavarz, "Use of IEDs and VBIEDs in Mexican Crime Wars", *Counter-IED Report*, Spring/Summer 2021, available at: www.academia.edu/49100323/Use_of_IEDs_and_VBIEDs_in_Mexican_Crime_Wars.

48 John P. Sullivan, "Explosive Escalation? Reflections on the Car Bombing in Ciudad Juarez", *Small Wars Journal*, 21 July 2010, available at: https://smallwarsjournal.com/jrnl/art/explosive-escalation; R. J. Bunker and J, P. Sullivan, above note 18, pp. 18–19, Table 2.

49 Robert J. Bunker and John P. Sullivan, "Mexican Cartel Strategic Note No. 28: Alleged Cártel de Jalisco Nueva Generación (CJNG) Car Bombing ('Coche Bomba') in Colombia", *Small Wars Journal*, 5 December 2019, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-strategic-note-no-28-alleged-cartel-de-jalisco-nueva-generacion-cjng-car; Robert J. Bunker, David A. Kuhn and John P. Sullivan, "Mexican Cartel Tactical Note #42: Car Bomb in Apaseo el Alto, Guanajuato with Remote Detonation IED ('Papa Bomba') Payload", *Small Wars Journal*, 7 January 2020, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-tactical-note-42-car-bomb-apaseo-el-alto-guanajuato-remote-detonation-ied.

50 J. P. Sullivan, above note 5.

being police), torching eighty-two buses and attacking seventeen banks.[51] Prison insurrections occurred at seventy-four out of 140 prisons, and schools, shopping centres, transport and commerce were interrupted.[52] In more recent examples of gangs' prowess, Brazil's gangs have recruited former Fuerzas Armadas Revolucionarias de Colombia (FARC; Revolutionary Armed Forces of Colombia) guerrillas,[53] conducted sophisticated, combined-arms, bank robberies known as the new *Cangaço* after historical instances of brigandage, interfered with elections, conducted prison riots, and deployed terrorist (or quasi-terrorist) violence against civil government and critical infrastructure. The PCC is a major player in this regard, as it continues to exert its influence through micro-power in prisons and its "prison–street gang complex". Corruption and impunity empower these episodes of "violent lobbying" as *favelas* become criminal enclaves. Both militias and gangs pursue these violent actions against each other and the State. Human shields have also been utilized as part of the new *Cangaço*-style robberies.

Current operations and the "*Novo Cangaço*"

In one early cross-border bank robbery at Ciudad del Este on 24 April 2017, a criminal band assaulted an armoured car warehouse, blasted the vault and escaped with over US$ 8 million. The heist included a vehicle and boat chase, an attack on a police station, multiple blockades, grenades, explosives and a .50 calibre rifle. The PCC was the main suspect.[54] To counter these extreme criminal operations and endemic insecurity in the *favelas*, Brazilian authorities have enlisted the federal armed forces in a series of stability and support operations (SASOs) in Rio de Janeiro's *favelas*. The first of these contemporary SASOs was implemented in August 2017 when over 3500 soldiers were deployed after 100 police officers were killed in the first eight months of that year. These SASOs are known as *Garantia da Lei e da Ordem* (GLO) or Law and Order assurance operations.[55] In February 2018, the Military returned to Rio to take control of policing under DECRETO Nº 9.288 authorizing a GLO mission to 31 December 2018.[56]

51 The Economist, "The Mob Takes on the State", 18 May 2006, p. 39, available at: www.economist.com/the-Americas/2006/05/18/the-mob-takes-on-the-state.

52 *Ibid.*

53 Rogerio Jelmayer, Kejal Vyas and Samantha Pearson, "Brazilian Gang Enlists FARC Rebels for Drug Trade", *Wall Street Journal*, 31 January 2017, available at: www.wsj.com/articles/brazilian-gang-enlists-farc-rebels-for-drug-trade-1485858609.

54 Jonathan Watts, "'Heist of the Century': Brazilian Gang Hits Security Vault and Police HQ in Paraguay", *The Guardian*, 25 April 2017, available at: www.theguardian.com/world/2017/apr/25/paraguay-heist-brazil-gangsters-dynamite-speedboat.

55 John P. Sullivan and Robert J. Bunker, "Third Generation Gangs Strategic Note No. 5: Brazilian Military Stability and Support Operations (SASO) in Rio de Janeiro's Favelas", *Small Wars Journal*, 9 November 2017, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-5-brazilian-military-stability-and-support.

56 John P. Sullivan, José de Arimatéia da Cruz and Robert J. Bunker, "Third Generation Gangs Strategic Note No. 10: Military Takes Control of Policing in Rio de Janeiro", *Small Wars Journal*, 23 February 2018, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-10-military-takes-control-policing-rio-de-janeiro.

In January 2019, a coalition of gangs – including the PCC, Comando Vermelho (CV; Red Command), and their local counterparts Guardiõs do Estado (GDE, Guardians of the State) and Família do Norte (FDN, Northern Family) – waged a reprisal against state forces after the state prison administration enacted enhanced security measures in prisons in the state of Ceará. The city of Fortaleza bore the brunt of these assaults, which included bombings, arson against school buses and other vehicles, police stations, public buildings, bridges, businesses and banks.[57] Later that year in August 2019, a prison riot at Altamira prison, in Pará state in northern Brazil, led by members of the Comando Classe A (CCA; Class A Command), a vassal/allied gang to the PCC, left fifty-eight rival CV gangsters dead, including sixteen decapitated.[58] Another case of gangs' power projection occurred in Manaus in June 2021. In this case, a CV leader was killed in a confrontation with the Polícia Militar (PM; Military Police) of Amazonas. The resulting gang reprisals included shootings and arson attacks on police, buses, bus stations, schools, banks and public spaces over a three-day period from 5 to 8 June 2021.[59]

Criminal enclaves and competitive control

The existence of criminal enclaves or parallel powers in the *favelas* presents several difficulties for the State. These include issues of perceived legitimacy and concerns over abuses of power when responding to gang activity and violence. For example, on 6 May 2021, at approximately 06.00 hours (6 a.m.), Rio de Janeiro's civil police (Polícia Civil do Estado do Rio de Janeiro (PCERJ)) entered the Jacarezinho *favela* to perform a raid.[60] The action, entitled Operação Exceptis (Operation Exception), was directed against known members of the CV. The PCERJ encountered small-arms fire, which killed a PCERJ officer as the team entered the *favela*. A sustained battle followed and continued throughout the day, leaving at least twenty-eight persons dead, including the police officer and twenty-seven residents. The deadly incident provoked widespread global criticism.[61]

57 Jo Griffin, "'Climate of Panic': Bombings in Brazil Reveal Growing Power of Gangs", *The Guardian*, 15 January 2019, available at: www.theguardian.com/global-development/2019/jan/15/climate-of-panic-bombings-in-brazil-reveal-growing-power-of-gangs?CMP=share_btn_tw.

58 Robert J. Bunker, José de Arimatéia da Cruz and John P. Sullivan, "Third Generation Gangs Strategic Note No. 19: Comando Classe A (CCA) Massacre of Comando Vermelho (CV) Gang Members in Altamira Prison, Brazil – 58 Dead (Including 16 Decapitations)", *Small Wars Journal*, 6 August 2019, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-19-comando-classe-cca-massacre-comando-vermelho.

59 John P. Sullivan, José de Arimatéia da Cruz and Robert J. Bunker, "Third Generation Gangs Strategic Note No. 40: *Força Nacional de Segurança Pública* Deployed to Manaus in Aftermath of *Comando Vermelho* Violence on the Streets", *Small Wars Journal*, 28 June 2021, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-40-forca-nacional-de-seguranca-publica-deployed?fbclid=IwAR3ATiC8W6T1M7N7woAVSkNzElwQInvEkb5SKdZ1AP2m36PqymViUZ-_E4k.

60 Terrence McCoy, "Rio Police were Ordered to Limit Favela Raids During the Pandemic. They're Still Killing Hundreds of People", *Washington Post*, 20 May 2022, available at: www.washingtonpost.com/world/2021/05/20/brazil-police-rio-jacarezinho-favela-raid/.

61 Robert Muggah, "Rio's Bloody Police Campaign", *Small Wars Journal*, 7 May 2021, available at: https://smallwarsjournal.com/jrnl/art/rios-bloody-police-campaign; John P. Sullivan, Robert J. Bunker, and José

In August 2021, an armed group of approximately twenty gangsters conducted a series of urban bank raids in Araçatuba in Metropolitan São Paulo.[62] The new *Cangaço*-style raids used aerial drones, explosives and assault-style rifles. Hostages were taken and tied to the top of escape vehicles for use as human shields. Blockades comprised of burning vehicles and explosives were strategically located to facilitate escape. Between 5 and 16 April 2021, at least ten similar attacks were waged in cities across four states: São Paulo, Paraná, Bahia and Minas Gerais. The aerial drones were not weaponized in this sequence but were used for intelligence, surveillance and reconnaissance (ISR). These *Novo Cangaço*-type operations are essentially complex attack sequences using "urban siege" tactics similar to those developed by terrorists, raising complicated tactical and operational co-ordination issues for both the gangsters and responding police. These heavily armed and highly coordinated operations show that at least some gangsters are evolving sophisticated TTPs that challenge the operational capacity of most municipal or state police.[63] The PCC also threatens judges and prosecutors, as is seen in recent intercepts where gang leaders ordered the assassinations of judicial officials prosecuting the gang in Mato Grosso do Sul.[64]

Militias currently control more territory than gangs in Rio de Janeiro. The militias, originally extrajudicial vigilantes, now occupy a majority stake in the region's illicit economy. The area controlled by the militias is home to nearly 2.2 million people. The militias are now powerful criminal enterprises and parallel powers exerting criminal governance. They compete with gangs, the police, and at times the military, for control of the *favelas*. The result is diminished State solvency (or the sum of capacity and legitimacy) that fuels a criminal insurgency where CAGs empower transitions of sovereignty and provide opportunities for criminal governance.[65]

de Arimatéia da Cruz, "Third Generation Gangs Strategic Note No. 36: High Casualty Civil Police Raid in Rio de Janeiro's Jacarezinho *Favela* Raises Human Rights Concerns", *Small Wars Journal*, 25 May 2021, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-36-high-casualty-civil-police-raid-rio-de.

62 John P. Sullivan, José de Arimatéia da Cruz and Robert J. Bunker, "Third Generation Gangs Strategic Note No. 42: Brazilian Gangs Utilize Human Shields, Explosives, and Drones in a New '*Cangaço*' Style Urban Bank Raid in Araçatuba, São Paulo", *Small Wars Journal*, 5 September 2021, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-42-brazilian-gangs-utilize-human-shields.

63 *Ibid*.; and John P. Sullivan, "Policing Urban Conflict: Urban Siege, Terrorism and Insecurity", *Stratfor*, 10 April 2018, available at: www.academia.edu/36721271/Policing_Urban_Conflict_Urban_Siege_Terrorism_and_Insecurity; John P. Sullivan and Adam Elkus, "Postcard from Mumbai: Modern Urban Siege", *Small Wars Journal*, 16 February 2009, available at: https://smallwarsjournal.com/jrnl/art/postcard-mumbai-modern-urban-siege.

64 Luís Adorno, "PCC manda matar juízes e promotora de MG por descobrirem ações da facção, diz investigação", *Noticias R7*, 30 March 2022, available at: https://noticias.r7.com/cidades/pcc-manda-matar-juizes-e-promotora-de-mg-por-descobrirem-acoes-da-faccao-diz-investigacao-30032022.

65 John P. Sullivan, José de Arimatéia da Cruz and Robert J. Bunker, "Third Generation Gangs Strategic Note No. 32: Militias (*Milícias*) Surpass Gangs (*Gangues*) in Territorial Control in Rio de Janeiro", *Small Wars Journal*, 26 October 2020, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-32-militias-milicias-surpass-gangs-gangues; Christian Vianna de Azevedo, "Criminal Insurgency in Brazil – The Case of Rio de Janeiro: Context, Confrontation Issues and Implications for Brazilian Public Security", *Small Wars Journal*, 22 January 2018, available at: https://smallwarsjournal.com/jrnl/art/criminal-insurgency-brazil.

Narcocultura and social modification

Drug cartels and gangs challenge State authority in Mexico and Brazil (as well as parts of Central America). This challenge is essentially a "power–counterpower" struggle that erodes State legitimacy and solvency. As part of this struggle, these CAGs act as "primitive rebels" where groups use pre-political agitation to express social discontent or "social bandits" where they frame their activities as rebellion against oppressive State actions and/or corruption (or at least seek that mantle to secure public approval for their actions).[66] This action involves "*narcocultura*" and can usher in a State transition process or "criminal insurgency". This can be summarized as a feature of what Howard Campbell calls the "Drug War Zone", a contested space where *narcos* confront the State in a battle for power, legitimacy, and social and cultural supremacy.[67] This process can be summarized:

> As part of this contest, the cartels provide utilitarian social goods, form narratives of power and rebellion and act as "post-modern social bandits" to gain support and legitimacy within their own organizations and the geographic areas they control. Their message is delivered through the use of instrumental and symbolic violence and information operations (including influencing the press, forging a social narrative – *narcocultura* – where the gangsters are seen as powerful challengers to the corrupt State). *Narcocorridos* (folk songs), *narcomantas* (banners), *narcobloqueos* (blockades), *narcomensages* (messages in many forms including "corpse-messages"). and alternative systems of veneration (narco-saints including Jesus Malverde and Santa Muerte) are used to craft these narratives of (counter) power.[68]

Narco-saints (or *Santitos*) are folk symbols of veneration that help forge social bonds among the cartel members and gangs in their social orbit. This folk veneration is both a feature of "primitive rebellion" and illustrative of the bottom-up influence on social belief systems. *Narcocultura* is playing a key role in this development. The narco-saints include Jesús Malverde and Santa Muerte, as well as the quasi-evangelical constructs of La Familia Michoacana and its successor the Caballeros Templarios (Knights Templar), Santo Niño Huachicolera and *huachicolera cultura* among Guanajuato's fuel thieves and San Nazario.[69] In this case, *narcocultura* augments the development of:

> a new social order through "criminal insurgency" [involving] the use of symbolic and instrumental violence, exerting territorial control, the utilitarian

66 Eric Hobsbawm, *Bandits*, The New Press, New York, 2000, 1969; Eric Hobsbawm, *Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries*. W.W. Norton & Company, New York, 1959.

67 Howard Campbell, *Drug War Zone: Frontline Dispatches from the Streets of El Paso and Juárez*, University of Texas Press, Austin, TX, 2009; J. P. Sullivan, above note 15.

68 J. P. Sullivan, *ibid.*

69 *Ibid.*; Robert J. Bunker and Alma Keshavarz (eds), *Los Caballeros Templarios de Michoacán: Imagery, Symbolism, and Narratives*, Small Wars Foundation, Bethesda, MD, 2019, available at: www.academia.edu/38806893/Los_Caballeros_Templarios_de_Michoacán_Imagery_Symbolism_and_Narratives.

> provision of social goods, the use of propaganda and information operations, and the use of symbols of authority to confer legitimacy (as seem in the use of uniforms, marked vehicles, and cartel insignia).[70]

San Nazario, *el apóstol del narco* (the narco-apostle), started his career as a *narco* in the Milenio Cartel, then leveraged evangelical beliefs to forge a new belief system to support his rise to power, demonstrating the role that belief systems can play in reinforcing temporal power.[71]

In Brazil, a "battle" for spiritual dominance and temporal power is occurring in Rio's *favelas*. Evangelical bandits (*bandidos evangélicos*) or gangsters linked to evangelical (and neo-Pentecostal) Christian sects are attacking the *terreiros* or temples of syncretic/traditional traditions Macumba, Umbanda and Candomblé. Gangs such as the Terceiro Comando Puro (Pure Third Command) are waging a holy war and cleansing their neighbourhood of rival traffickers.[72] In another notable case, a *facção* (drug trafficking faction) led by "Peixão" (Big Fish) Álvaro Malaquias Santa Rosa is forging a complex of *favelas* known as "Complexo de Israel" (Israel Complex). Peixão's domain in the Northern Zone of Rio de Janeiro merges five *favelas* under his control: Cidade Alta, Vigáro Geral, Parada de Lucas, Cinco Bocas and Pica-Pau. The area contains 134,000 residents. Peixão's gang is evangelical in orientation and uses a mix of religious imagery and targeted confessional violence to achieve its aims of territorial control and domination of the licit market.[73] In November 2021, the Peixão Facção built a canal bridge to allow its members access to their territories in the Complexo de Israel without having to encounter police surveillance since the bridge linked two of the *favelas* controlled by the gang.[74]

Humanitarian considerations

Cartel violence in Mexico drives migration (both internally displaced persons and refugees), and results in the development of "zones of impunity, where at least 37,00 desaparecidos (disappeared persons) augment murders and cartels utilize social cleansing to eliminate threats to their operations", and where

70 John P. Sullivan, "Postscript: Narcocultura, Insurgencies, and State Change", in R. J. Bunker and A. Keshavarz, *ibid.*

71 *Ibid.*

72 Robert Muggah, "In Brazil, Religious Gangs Leaders Say They're Waging a Holy War", *The Conversation*, 2 November 2017, available at: https://theconversation.com/in-brazil-religious-gang-leaders-say-theyre-waging-a-holy-war-86097.

73 John P. Sullivan, Robert J. Bunker and José de Arimatéia da Cruz, "Third Generation Gangs Strategic Note No. 30: Traficante Evangélico (Evangelical Trafficker) Creates '*Complexo de Israel*' Using Confessional Violence to Consolidate Control in Five Rio Favelas", *Small Wars Journal*, 4 August 2020, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-30-traficante-evangelico-evangelical-trafficker.

74 Marco Antônio Martins and Lilia Teles, "Traficantes do Complexo de Israel erguem ponte para circular entre favelas e evitar vigilância policial", *G1 (Globo)*, 19 October 2021, available at: https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/10/19/ponte-trafico-complexo-de-israel.ghtml.

humanitarian, medical and healthcare workers are at risk.[75] At least 338,000 persons have been displaced by violence in Mexico since 2009 to 2019 according to the Internal Displacement Monitoring Centre.[76] Healthcare workers are also targeted by cartels, where *sicarios* interrupt the provision of care, Cruz Roja Mexicana (Mexican Red Cross) workers have been attacked and a patient murdered, an administrator assassinated, and a paramedic killed (and four to six others injured) when an armed group opened fire on aid workers distributing humanitarian assistance.[77] Cartels have also threatened healthcare workers treating rival cartel members and demanding priority treatment for their own cartel members:[78]

> In one extreme case a sustained cartel battle left Tijuana, Mexico, hospitals at risk as cartel *sicarios* engaged in simultaneous pre-dawn gun battles. As emergency physicians treated drug traffickers, federal troops secured the Hospital General de Tijuana to ensure the provision of life-saving care.[79]

In addition to the direct battles between cartels and government forces, cartel violence has profound effects on communities, governance and humanitarian response to the violence. According to Diane Davis, the interaction between crime and conflict is articulated as one where irregular "armed forces" seek to usurp some government functions.[80] In "Terrorism, Crime and Private Armies", this is described as:

> Terrorists, criminal actors, and private armies of many stripes have altered the ecology of both crime and armed conflict. In many cases, the two are intertwined. Several factors reinforce these links. Global organized crime, which increasingly links local actors with their transnational counterparts, coupled with chronic warfare and insurgency (which yields economic benefits to some of its participants) can propel local or regional conflicts into genocidal humanitarian disasters. These regions, which are essentially criminal free-States, provide refuge and safe haven to terrorists, warlords, and criminal enterprises.[81]

75 John P. Sullivan, "Humanitarian Diplomacy for Protecting Vulnerable Persons and Humanitarian Aid Workers in Civil Strife and Non-International Armed Conflict in Mexico and Central America's Northern Triangle", *Vortex Working Paper No. 52*, 2020, available at: www.academia.edu/43140694/Humanitarian_Diplomacy_for_Protecting_Vulnerable_Persons_and_Humanitarian_Aid_Workers_in_Civil_Strife_and_Non_International_Armed_Conflict_in_Mexico_and_Central_Americas_Northern_Triangle.

76 Internal Displacement Monitoring Centre, "Mexico, Annual Conflict and Disaster Displacement", 2019, available at: www.internal-displacement.org/countries/mexico.

77 J. P. Sullivan, above note 75, p. 8. Also, see David Agren, "Violence Rife in Mexico, Affecting Medical Community", *The Lancet*, Vol. 391, No. 10128, available at: www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)30738-4/fulltext.

78 Marc Lacey, "Hospitals Now a Theater in Mexico's Drug War", *New York Times*, 5 December 2008, available at: www.nytimes.com/2008/12/05/world/americas/05iht-05mexico.18426237.html.

79 Associated Press, "Tijuana Drug Violence Threatens Hospital", *NBC News*, 29 April 2008, available at: www.nbcnews.com/id/wbna24372823.

80 Diane E. Davis, quoted by Peter Dizikes, "An Altered State", *PHYSORG.com*, 19 April 2010 at J. P. Sullivan, above note 2, p. 7.

81 J. P. Sullivan, above note 2, p. 9.

Essentially criminal enterprises, specifically CAGs, are becoming para-political challengers to the State's monopoly on violence to ensure freedom of action. Increasingly, some of these criminal actors employ more sophisticated means in this pursuit.

Advanced TTPs

Mexican cartels are increasingly seen using the weapons of war including antipersonnel landmines, rocket-propelled grenades (RPGs) and weaponized aerial drones.[82] The use of advanced infantry tactics, weaponized drones, improvised armoured vehicles, and criminal intelligence and surveillance systems, along with marked uniforms and vehicles by criminal belligerents, are factors that demonstrate the sophistication of some of the CAGs active in Mexico. Most of the active cartels wear distinctive clothing or uniforms during many of their combat operations and mark their vehicles with their insignia to enable both distinction and effective co-ordination of their combat action.

The cartels – especially the CJNG and its rivals – are in a stage of tactical evolution that enables them to gain an edge over their rivals in order to accrue power, gain territorial control while enhancing their profits and survivability. At times, the cartels can tactically out-gun and manoeuver police and military forces. Many cartels, for example the Gulf Cartel, Zetas, CDS and CJNG, have used improvised armoured vehicles, including light armoured trucks, and artisanal *narcotanques* (or *monstruos*) with mounted infantry to confer tactical advantage.[83] Tactical evolution among cartels includes the use of improvised explosive devices (IEDs), grenades, small-calibre mortars, sniper rifles, RPGs with anti-armour munitions, man-portable air-defence systems (MANPADS), ambushes of government forces (police and military), the use of jet skis for tactical amphibious assaults, human shields, Claymore (anti-personnel) mines, anti-vehicle landmines, underground bunkers, and the use of trenches and obstacles to shape the operational (battle) space.[84]

Antivehicle landmines

The use of cartel antivehicle landmines against a Mexican Army convoy near Apatzingán, Michoacán, an area contested by the CJNG and their rivals the Cárteles Unidos, left at least one and up to four soldiers injured; specific details

82 Marcos González Díaz, "Cómo los carteles en México están usando armas no convencionales como si fueran ejércitos en guerra", *BBC Mundo*, 24 March 2022, available at: www.bbc.com/mundo/noticias-america-latina-60486794.

83 C. Dalby, above note 17.

84 Robert J. Bunker and John P. Sullivan (eds), *Illicit Tactical Progress: Mexican Cartel Notes 2013–2020*, Xlibris, Bloomington, IN, 2021.

have not yet been disclosed and it is uncertain which entity placed the mine(s).[85] The day prior to the incident, the Secretaría de Defensa Nacional (SEDENA) detained fifteen CJNG members after four attacks against Government of Mexico forces involving artisanal armoured vehicles and explosives. These deployments included explosive ordnance disposal units.[86] In February 2022, an elderly farmer was killed and his son injured by a CJNG landmine in the Tierra Caliente, near Aguaje, Aguililla.[87] SEDENA technicians deactivated 250 homemade mines in Tepalcatepec, Colacomán and Aguililla, Michoacán after the farmer was killed. In another subsequent incident three cows were killed by mines.[88] Due to the intensity of the confrontations in the regions, the Ejército Mexicano (Mexican Army) is now using rocket launchers (known by the troops as "Blindicide") to neutralize cartel armoured vehicles (IAFVs) used by the CJNG in Zacatecas.[89]

Weaponized drones

Weaponized drones present another operational challenge in Mexico's crime wars.[90] Cartel commandos are attacking their rivals and government forces with armed drones. An early incident involved targeting the residence of the Baja Public Safety Director in Tecate on 10 July 2018. In that incident which appears to have been intended as a threat communication or demonstration of capability, two IEDs were taped to the drone's frame.[91] Drones are used by Mexican cartels as tools for ISR, that is they are used to scout and gather information to support combined-arms operations, including operations with mounted infantry. Weaponized drones are used to attack rivals and support mounted infantry operations. Finally, drones are used to capture video for propaganda and

85 An earlier Cárteles Unidos mine incident targeted the CJNG in early January 2021. A similar indications and warning incident involving improvised anti-vehicle mines was reported in October 2021. In the aftermath of the January 2021 incident, Government of Mexico forces, including the Guardia Nacional, SEDENA, as well as Policía Michoacán (Michoacán Police) and agents of the Fiscalía Genral del Estado (Michoacán state prosecutor) saturated the area. La Opinión, "VIDEO: Explota con mina camión blindado del CJNG, sicarios del Mencho así cayeron en trampa [VIDEO: CJNG's Armoured Truck Explodes with Mine, Mencho's Hired Killers Fall into Trap]", 3 January 2021, available at: https://laopinion.com/2021/01/03/video-explota-con-mina-camion-blindado-del-cjng-sicarios-del-mencho-asi-cayeron-en-trampa/.

86 DW (Deutsche Welle), "Mexico: Soldiers to Remove Land Mines Planted by Cartels", 19 February 2022, available at: www.dw.com/en/mexico-soldiers-to-remove-land-mines-planted-by-cartels/a-60839983.

87 Elena Reina, "In Sign of Escalating Violence, Mexico's Narcos Plant Land Mines in Tierra Caliente", *El País*, 17 February 2022, available at: https://english.elpais.com/international/2022-02-17/in-sign-of-escalating-violence-mexicos-narcos-plant-land-mines-in-tierra-caliente.html.

88 Ernesto Martínez Elorriaga, "Sedena desactiva 250 minas caseras en Michoacán en tres semanas", *La Jornada*, 20 February 2022, available at: www.jornada.com.mx/notas/2022/02/20/estados/sedena-desactiva-250-minas-caseras-en-michoacan-en-tres-semanas/.

89 Jorge Martínez, "Ejército mexicano usa lanzacohetes para enfrentar al CJNG en Zacatecas", *Milenio*, 1 March 2022, available at: www.milenio.com/politica/ejercito-mexicano-lanzacohetes-enfrentar-cjng-zacatecas.

90 Robert J. Bunker and John P. Sullivan, *Criminal Drone Evolution: Cartel Weaponization of Aerial IEDs*, Xlibris, Bloomington, IN, 2021.

91 John P. Sullivan, Robert J. Bunker and David A. Kuhn, "Mexican Cartel Tactical Note #38: Armed Drone Targets the Baja California Public Safety Secretary's Residence in Tecate, Mexico", *Small Wars Journal*, 6 August 2018, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-tactical-note-38-armed-drone-targets-baja-california-public-safety.

information operations.[92] The proliferation of aerial drones by non-State actors, including CAGs, offers the criminal arms bearers tactical and operational benefits including aerial manoeuver for attacks, smuggling and ISR. Police and military forces need to develop countermeasures for operating in environments with weaponized drones. This includes developing technical capacity, doctrine, and training for neutralizing aerial drone threats and legal frameworks enabling these countermeasures.[93]

COVID-19 and criminal conflicts

The COVID-19 pandemic has created opportunities for organized criminal groups – including CAGs. Extremism, conflict and the consolidation of illicit economic and political power are among the opportunities for non-State actors and challenges for States. Gangs, cartels and mafias can leverage the disruptive forces of the pandemic to exploit the situation and bolster their "statemaking" potentials. Criminal enterprises have imposed and enforced curfews, quarantines and social distancing. They have engaged in the provision of humanitarian aid and in general capitalized on the vacuum in State governance to usurp the provision of public goods and services, control the pricing on food and medicine, and in many cases enhance their status and perceived legitimacy in the communities where they operate. In Brazil's *favelas*, gangs imposed curfews; in Mexico, cartels provided humanitarian aid.[94] Collectively, these factors suggest potentials for destabilization, stimulating and exacerbating conflicts, and the rise of "hybrid" threats, such as bioterrorism involving future bioweapons and infectious diseases (although these can be expected to be an outlier).[95]

In Mexico, cartels exploited the pandemic to bolster their public image. The Gulf Cartel distributed aid boxes containing food in Tamaulipas,[96] the CJNG distributed aid in impoverished parts of San Luis Potosi and also provided aid in Cuautitlán Jalisco.[97] On the east coast, Los Zetas provided aid in the port city of

92 Robert J. Bunker, *Terrorist and Insurgent Unmanned Aerial Vehicles: Use, Potentials, and Military Implications*, Strategic Studies Institute and US Army War College Press, Carlisle, PA, 2015; R. J. Bunker and J. P. Sullivan, above note 90.

93 Robert J. Bunker and John P. Sullivan, "Mexican Cartels are Embracing Aerial Drones and They're Spreading", *War on the Rocks*, 11 November 2021, available at: https://warontherocks.com/2021/11/mexican-cartels-are-embracing-aerial-drones-and-theyre-spreading/.

94 John P. Sullivan and Robert J. Bunker (eds), *COVID-19, Gangs, and Conflict*, Xlibris, Bloomington, IN, 2020; Tuesday Reitano and Mark Shaw, *Criminal Contagion: How Mafias, Gangsters and Scammers Profit from a Pandemic*, Hurst & Co., London, 2021.

95 John P. Sullivan, "How COVID-19 is Influencing Organized Crime and Conflict", *Homeland Security Today*, 25 January 2021, available at: www.hstoday.us/subject-matter-areas/counterterrorism/how-covid-19-is-influencing-organized-crime-and-conflict/.

96 Economía Hoy, "Reportan entrega de despensas del Cártel del Golfo en Ciudad Victoria, Tamaulipas", 6 April 2020, available at: www.economiahoy.mx/nacional-eAm-mx/noticias/10466405/04/20/Reportan-entrega-de-despensas-del-Cartel-del-Golfo-en-Ciudad-Victoria-Tamaulipas.html.

97 La Verdad Noticias, "CJNG reparte despensa por coronavirus ahora en San Luis Potosí", 14 April 2020, available at: https://laverdadnoticias.com/crimen/CJNG-reparte-despensa-por-coronavirus-ahora-en-San-Luis-Potosi-20200414-0033.html.

Coatzacoalcos, Veracruz,[98] while the CDS provided COVID-19 relief, including the distribution of "Chapo Provisions" in Guadalajara, Jalisco.[99] A CDS faction, Los Chapitos, enforced quarantine curfews,[100] while smaller groups, including La Familia Michoacana remnants, provided aid to low-income elderly residents in Guerrero and Los Viagras, and distributed food in Apatzingán and surrounding towns, with the funds for the aid believed to be supported by street taxes levied on local businesses.[101] These assistance packages were all branded with logos and signatures of cartel leaders of the respective cartel benefactors.[102] In sum, according to Robert Muggah and Steven Dudley, the COVID-19 pandemic seems to have presented opportunities to strengthen criminal governance, since "criminal groups appear poised to exert even greater oversight of entire sections of cities and neighborhoods. The effect may last for years to come."[103]

Controversies in categorizing conflict

Crime wars and criminal insurgencies present difficult challenges to States as they seek to address these militarized criminal threats. It is important to recognize that not all criminal activity involving CAGs in any given State rises to the level of conflict or to the level of criminal insurgency in its four potential forms: (1) local insurgencies; (2) a battle for the parallel State; (3) combatting the State; and (4) the State implodes.[104] Local insurgencies occur at a neighbourhood level where gangs dominate the local turf and influence political, economic and social life. While these gangs have latent potential to develop a criminal enclave with autonomy, they never fully supplant the State and rather a parallel State or criminal governance results.[105] The battle among criminal enterprises for control

98 Reports on the Zetas' aid are fragmentary and contained in social media. See, Ignacio Carvajal's Facebook Page. Reposted by *Código Veracruz Noticias*, 16 April 2020, available at: www.facebook.com/CodigoVeracruzNoticias/posts/2590548131267420. The details, along with analysis are recounted in Robert J. Bunker and John P. Sullivan, "Mexican Cartel Strategic Note No. 29: An Overview of Cartel Activities Related to COVID-19 Humanitarian Response", *Small Wars Journal*, 8 May 2020, available at: https://smallwarsjournal.com/jrnl/art/mexican-cartel-strategic-note-no-29-overview-cartel-activities-related-covid-19.

99 Drazen Jorgic, "El Chapo's Daughter, Mexican Cartels Hand Out Coronavirus Aid", *Reuters*, 17 April 2020, available at: www.reuters.com/article/us-health-coronavirus-mexico-cartels/el-chapos-daughter-mexican-cartels-hand-out-coronavirus-aid-idUSKBN21Y3J7?utm_source=twitter&utm_medium=Social.

100 Frontera Al Rojo Vivo, "VIDEO.– Chapitos Sicarios del Cártel de Sinaloa lo levantan y tablean por no respetar sus ordenes de no salir por COVID-19", 19 April 2020, available at: https://lare2s.blogspot.com/2020/04/video-chapitos-sicarios-del-cartel-de.html?utm_source=dlvr.it&utm_medium=twitter.

101 Infobae, "Los Viagras y el Cártel del Golfo: qué cárteles se están aprovechando del coronavirus para repartir despensas", 7 April 2020, available at: www.infobae.com/america/mexico/2020/04/07/los-viagras-y-el-cartel-del-golfo-que-carteles-se-estan-aprovechando-del-coronavirus-para-repartir-despensas/.

102 L. Y. Calderón *et al.*, above note 24, pp. 52–4.

103 Robert Muggah and Steven Dudley, "COVID-19 is Reconfiguring Organized Crime in Latin America and the Caribbean", *Small Wars Journal*, 2 March 2021, available at: https://smallwarsjournal.com/jrnl/art/covid-19-reconfiguring-organized-crime-latin-america-and-caribbean.

104 J. P. Sullivan, above note 2.

105 *Ibid.*

of the "parallel State" occurs when the groups compete for domination of a criminal enterprise or criminal enclave. The resulting violence often spills over into the community and affects the police and military that try to contain it.[106] A situation of direct confrontation occurs when the CAGs directly engage the State to secure freedom of action and become active belligerents against the State.[107] The final condition occurs when the State loses the capacity to respond. It has not occurred in Mexico or Brazil, but could in theory result when a national State transitions into a "narcostate" and loses the capacity to respond.[108]

These four conditions are not mutually exclusive. In addition, several criminal insurgencies can exist simultaneously between different actors (as is also the case with NIACs). Indeed, in Mexico, for example, it can be argued that several interconnected criminal insurgencies co-exist. Beyond this, the violent activity may exist as high-intensity crime, and may be characterized as civil strife. Alternatively, the violence may reach the level of a NIAC if the non-State group has the organizational capacity to adhere to international humanitarian law (IHL) and the armed violence is protracted and reaches a level of intensity (including duration and intensity of individual confrontations, the type of military equipment used, the frequency and spread of fighting, and State reaction). For organizational capacity, a command structure with the ability to plan, coordinate and conduct operations, as well as exercising territorial control, is needed. The criminal nature of the group is irrelevant to characterization of a conflict as a NIAC.[109] Of course, this characterization is controversial.

Factors and complexities of acknowledging NIACs

Usually, criminal violence is a matter of criminal or penal and human rights law. That is, States govern their internal violence and civil strife via their domestic criminal statutes, and the use of force in these situations of violence is governed

106 *Ibid.*

107 *Ibid.* This is the situation in parts of Mexico, such as the reaction by La Familia against Mexican military and intelligence in July 2009 and the PCC attacks against state forces and use of quasi-terrorist attacks to influence policy discussed above.

108 *Ibid.* Also, see John P. Sullivan and Robert J. Bunker, "Third Generation Gangs Strategic Note No. 41: Criminal Insurgency and 'Revolution' in Haiti?" *Small Wars Journal*, 2 July 2021, available at: https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-41-criminal-insurgency-and-revolution-haiti; Ryan Dube and José de Córdoba, "Gangs Threaten to Tip Haiti Into a Failed State", *Wall Street Journal*, 19 October 2021, available at: www.wsj.com/articles/gangs-threaten-to-tip-haiti-into-a-failed-state-11634654955; Renata Segura, "Haiti's State of Paralysis: How to Break the Deadly Relationship Between Politics and Crime", *Foreign Affairs*, 20 April 2022, available at: www.foreignaffairs.com/articles/haiti/2022-04-20/haitis-state-paralysis.

109 In International Tribunal for the Former Yugoslavia (ICTY), *The Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-T, Judgment (Trial Chamber II), 30 November 2005, §170, available at: www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf:

> [t]he determination of the existence of an armed conflict is based solely on two criteria: the intensity of the conflict and organisation of the parties, the purpose of the armed forces to engage in acts of violence or also achieve some further objective is, therefore, irrelevant.

by a law enforcement paradigm and human rights law.[110] Crime wars and criminal insurgency are political processes, not legal definitions. Nevertheless, contemporary conflicts face challenges when it comes to a range of non-State actors. These actors include gangs, militias, criminal cartels and terrorists. Sometimes the definitions blur; as Martin van Creveld observed, "future war will not be waged by armies but by groups whom today we call terrorists, guerillas, bandits, and robber, but who will undoubtedly hit upon more formal titles to describe them themselves".[111]

The presence of these non-conventional actors in conflict raises both operational and legal issues. The crux of these is what approach and which body of law to apply in order to best resolve the situation. Applying the wrong paradigm can deepen the crisis, enhance instability and insecurity, while eroding State legitimacy. The first question, is which paradigm prevails: is it crime or war (actually the problem is the blurred boundaries between the two);[112] is it organized crime or criminal insurgency (it may be both).[113] These situations are often complicated by inadequate State capacity, diminished public perceptions of State legitimacy, and high levels of insecurity (collectively, State solvency).[114] Human rights concerns include abuses by the police and military (including extrajudicial killings, harsh response and torture), impunity and disappearances. Corruption also complicates matters. CAGs may employ terrorism (or quasi-terrorism) as previously mentioned.[115] In addition, many CAGs are transnational criminal organizations operating across borders (for example, Mexican Cartels in Colombia[116] and Brazilian gangs operating in Paraguay).[117]

Watkin assessed the security, legal and operational challenges of applying different bodies of law to contemporary conflicts and situations of violence in his text *Fighting at the Legal Boundaries*.[118] In essence, he writes that traditional approaches can hinder effective responses to non-State threats. The solution may lie in avoiding exclusive and rigid interpretations of the various bodies of law and

110 International Committee of the Red Cross (ICRC), "The International Committee of the Red Cross's (ICRC's) Role in Situations of Violence Below the Threshold of Armed Conflict: Policy Document, February 2014", *International Review of the Red Cross*, Vol. 96, No. 893, 2014, available at: www.cambridge.org/core/journals/international-review-of-the-red-cross/article/abs/international-committee-of-the-red-crosss-icrcs-role-in-situations-of-violence-below-the-threshold-of-armed-conflict/64183418A12D456A04D7BB59529547D5.

111 Martin van Creveld, *The Transformation of War*, The Free Press, New York, 1991. See also, Max G. Manwaring, *Street Gangs: The New Urban Insurgency*, Strategic Studies Institute and US Army War College Press, Carlisle, PA, 2005.

112 Kenneth Watkin, *Fighting at the Legal Boundaries*, Oxford University Press, New York, 2016.

113 R. J. Bunker, above note 3.

114 J. P. Sullivan, above note 12.

115 David Teiner, "Cartel-Related Violence in Mexico as Narco-Terrorism or Criminal Insurgency: A Literature Review", *Perspectives on Terrorism*, Vol. 14, No. 4; David Teiner, "Bibliography: Terrorism and Organized Crime in Latin America", *Perspectives on Terrorism*, Vol. 14, No. 4.

116 Julietta Pelcastre, "Mexican Narcotrafficking Cartels Expand their Control in Colombia", *Diálogo Americas*, 12 May 2021, available at: https://dialogo-americas.com/articles/mexican-narcotrafficking-cartels-expand-their-control-in-colombia/#.YrzN-y-B2X0.

117 Juan Diego Cárdenas, "Paraguay: The New Safe Haven for Brazilian Traffickers, Money Launderers", *InSight Crime*, 25 February 2022, available at: https://insightcrime.org/news/paraguay-the-new-safe-haven-for-brazilian-traffickers-money-launderers/.

118 K. Watkin, above note 112. See especially Chapter 1, for an overview of the challenges.

instead applying a holistic approach that integrates the application of the various legal regimes. Selecting the most effective approach depends upon the circumstances of the conflict and the capacity of the groups involved. Indeed, in one State, there may be multiple simultaneous situations, some of which reach the threshold of a NIAC, and others that remain conventional crime or civil strife.

The threshold for reaching the status of a NIAC is two-fold. First, the armed groups must possess a degree of organization necessary to meet the obligations of IHL (or the law of armed conflict) as articulated in Article 3 common to the four Geneva Conventions;[119] these include the existence of effective command and control, with the ability to plan and execute operations. Second, the level of intensity must exceed that of internal disturbances and tensions or periodic terrorist attacks. Indicators of this degree of intensity include the duration and intensity of conflict, the type and number of forces involved, the types of weapons used, and the level of casualties that result. Some, but not all of the cartels in Mexico (as illustrated in the preceding analysis), are engaged in protracted conflict against either the State or other CAGs and appear to possess the organizational structure, capacity, weaponry and ability to exert territorial control to meet these criteria. Others do not.

Nevertheless, in Mexico, it might be argued, and the present author concurs in the opinion, that at least three NIACs currently exist. First, according to the assessment of the Rule of Law in Armed Conflicts (RULAC) initiative, the Government of Mexico is suggested to be involved in two parallel NIACs, including the State's struggles with the CJNG and the CDS. In addition, the violence between the CDS and CJNG also constitutes a NIAC.[120]

Matters of conflict characterization are sensitive and both States and scholars hold various views on the application of the law of NIACs to these situations. Chiara Redaelli, at RULAC, regarding the CJNG states, "Regarding the armed confrontations between the Mexican armed forces and the CJNG, we considered that both criteria are met and that, therefore, the IHL of NIACs applies in addition to international human rights law."[121] Regarding the CDS, Dr Redaelli notes "that both the level of organization of the Sinaloa Cartel and the

119 ICRC, "Commentary of 2016, Article 3: Conflicts not of an International Character", *IHL Database: Treaties, States Parties and Commentaries*, Geneva, available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC.

120 RULAC, "Non-International Armed Conflicts in Mexico", RULAC, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, 30 May 2021, available at: www.rulac.org/browse/conflicts/non-international-armed-conflict-in-mexico; John P. Sullivan, "Non-International Armed Conflict: Mexico and Colombia", *Revista do Ministério Público Militar (Brasil)*, Vol. XLVI, No. 35, 25 November 2021, available at: www.academia.edu/62379204/Non_International_Armed_Conflict_Mexico_and_Colombia.

121 RULAC, "International Humanitarian Law Applies to The Armed Confrontations Between Mexico and The Jalisco Cartel New Generation", RULAC, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, 12 February 2019, available at: www.geneva-academy.ch/news/detail/209-international-humanitarian-law-applies-to-the-armed-confrontations-between-mexico-and-the-jalisco-cartel-new-generation.

level of confrontations with the Mexican armed forces and the CJNG meet the IHL criteria" for a NIAC.[122]

If accepted, the classification of these situations as NIACs would confer IHL obligations on all parties:

> All parties to the conflict are bound by Article 3 common to the 1949 Geneva Conventions, which provides for the minimum standards to be respected and requires humane treatment without adverse distinction of all persons not or no longer taking active part in hostilities. It prohibits murder, mutilation, torture, cruel, inhuman and degrading treatment, hostage taking and unfair trials.[123]

Both international human rights law and customary IHL of NIAC would apply.[124] Beyond these obligations, designation of crime wars as NIACs is operationally sensitive and, as such, requires further discussion and detailed analysis and discussion within and among the States and international organizations involved. The Mexican State has not acknowledged these situations as NIACs. The situation in Brazil is also ambiguous,[125] as the status of NIAC has yet to be adopted, although proposals for its consideration have been put forward.[126]

The question of which legal framework best protects the human rights of all persons involved (members of the groups, the States and their officials, the population) is of importance. The effectiveness (or lack thereof) of a law enforcement/human rights approach needs to be harmonized with a NIAC approach if the conditions of an NIAC are present. This must be assessed on a case-by-case basis (for all potential conflict situations) in a given State.

There are benefits and potential drawbacks to rigid application of any single framework, especially given the multi-faceted situation and multiple parties engaged in multiple, simultaneous situations and different levels of conflict. This analysis is exploratory and recognizes that additional discussion and analysis are warranted.

Conclusion

Criminal violence involving direct competition and confrontation of CAGs with State police and military forces is present in many States. In this paper, the violent competition among these non-State actors and the States of Mexico and

122 RULAC, "Two New Non-International Armed Conflicts in Mexico Involving the Sinaloa Drug Cartel", RULAC, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, 10 March 2020, available at: www.rulac.org/news/two-new-non-international-armed-conflicts-in-mexico-involving-the-sinaloa-d.

123 *Ibid.*

124 *Ibid.*

125 J. P. Sullivan and R. J. Bunker, above note 19.

126 Carlos Frederico De Oliveira Pereira, "Gray Zones and Crime Suppression: Between International Human Rights Law and International Law of Armed Conflicts", *Small Wars Journal*, 5 February 2020, available at: https://smallwarsjournal.com/jrnl/art/gray-zones-and-crime-suppression-between-international-human-rights-law-and-international.

Brazil was examined to identify areas where potential legal approaches can augment and enhance State responses to the violence. Both Mexico and Brazil are faced with high levels of criminal violence. This violence yields high levels of perceived and actual insecurity. In both States criminal cartels, gangs and militias (or CAGs) use violence as part of their quest to seek freedom of action, power and profit. In doing so, the resulting insecurity, coupled with corruption and at times impunity, results in diminishing public perceptions of legitimacy.

This paper provided an analysis of the violence used by these CAGs to illustrate the scope of the challenges faced. As we have seen, these challenges include violent competition, and targeted violence against State officials, judges, politicians, police and the military using armed commando tactics. In addition to advanced TTPs, including the use of weaponized aerial drones, landmines and artisanal armoured vehicles, these groups use hybrid influence techniques such as *narcocultura* and social modification. Through information operations (including violent lobbying), the utilitarian provision of social goods, such as humanitarian relief (essentially embracing the tools of social banditry), and imposing curfews during the COVID-19 pandemic the CAGs seek legitimacy among the communities where they operate. This competition can destabilize communities and empower the CAGs.

Finding the right balance among State responses (including police enforcement and military support to civil authorities) requires defining the most appropriate legal and operational approaches to contain the violence, mitigate insecurity and minimize humanitarian challenges. Integrating a range of legal approaches may be beneficial to addressing these violent challenges to States. Of course, the violence is unevenly distributed within and among the States involved. Both Mexico and Brazil are federal republics with constituent subnational polities or "states" and municipal governments. Each sub-national "state" has police and prosecutorial arms, as well as bodies of penal law. Since the levels of violence fluctuate within States, both in terms of intensity and degree of organization of the CAGs involved, much of the insecurity is classified as civil strife known as "other situations of violence". At times, the actors and intensity may reach the threshold of NIAC. Of course, the provisions of common Article 3 do not contain a detailed definition of the scope of application or checklist of the criteria for identifying the situations where it applies. That leaves the issue open to interpretation.[127]

This ambiguity makes discussion of the interface between various legal regimes (penal law, human rights law, IHL, international criminal law and

127 On the application of IHL, see Annyssa Bellal, "ICRC Commentary of Common Article 3: Some questions relating to organized armed groups and the applicability of IHL", *EJIL:Talk!*, 5 October 2017, available at: www.ejiltalk.org/icrc-commentary-of-common-article-3-some-questions-relating-to-organized-armed-groups-and-the-applicability-of-ihl/; also see ICTY, *The Prosecutor v. Dusko Tadić* (a/k/a "Dule"), Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, §70, available at: www.icty.org/x/cases/tadic/acdec/en/51002.htm; ICTY, *The Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Judgment (Trial Chamber II), 10 July 2008, paras 195 ff, available at: www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf.

emerging international law related to corruption) essential. These issues and the appropriate way forward must be discussed. The need to synchronize legal approaches, strengthen police and judicial capacity, and ensure effective governance through the rule of law are essential to negotiating these criminal conflicts.

Essentially, these criminal conflicts present situations of convergence where terrorism, quasi-terrorism, domestic, foreign, global and networked intersect.[128] While, of course there is no simple solution and various States may find different solutions, such as relying on penal and human rights law, several questions deserve deliberation. First, are new legal and political frameworks (regimes) needed? If so, what new laws are necessary? Will they be located in IHL, in international criminal law, will they intersect with emerging international anti-corruption instruments, etc.? In addition, what form of global or transnational co-operation is needed, what force structures are best suited to address these threats, and how can they be supported through policy, doctrine, interagency, multilateral co-operation and intelligence support? This paper seeks to provide the operational context for this deliberation. Resolving these issues and the gaps in operational capacity can potentially address the acute insecurity that results when CAGs directly confront the State. These efforts must build national and transnational rule of law organs while limiting the corrosive effects of corruption and impunity. Reducing insecurity and violence can help mitigate the effects of crime wars and their erosion of State solvency by reinforcing both legal and operational capacity.

128 Quasi-terrorist acts utilize terrorist *modus operandi*/TTPs but lack overt political aims. For a discussion of quasi-terrorism, see National Advisory Committee on Criminal Justice Standards and Goals, *Disorders and Terrorism – Report of the Task Force on Disorders and Terrorism*, US Department of Justice, Washington, DC, 1976, especially p. 5, available at: www.ojp.gov/ncjrs/virtual-library/abstracts/disorders-and-terrorism-report-task-force-disorders-and-terrorism.