The Challenges of Territorial Gangs: Civil Strife, Criminal Insurgencies and Crime Wars

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Transnational gangs challenge states in a variety of way. First, they transcend geographical and jurisdictional boundaries. Second, when left unchecked, they can erode the legitimacy of state institutions, co-opt state officials, and exceed state capacity to control their actions. A combination of crime, corruption, and impunity can empower criminal enterprises—gangs and criminal cartels—at the expense of the state. Finally, transnational crime blurs the distinctions between crime and war, local and global, and state and non-state violence.[1] This essay examines these challenges and the evolution of gangs and criminal cartel conflict.

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1 GANG VIOLENCE AND INSECURITY

Gang violence and insecurity is a pressing concern throughout Latin America—from Mexico to the Southern Cone[2]. Mexico is rocked by endemic insecurity waged by criminal cartels and gangs against themselves and the state.[3] The situation is essentially one of 'criminal insurgency' where cartels seek to remove themselves from the state's control in order to pursue raw, unfettered criminal power and profit.[4]

In Mexico, the murder rate has reached unprecedented levels with 14,603 homicides in the first six months of 2019 (in contrast to 13,985 homicides for the same time frame last year), suggesting that Mexico will top its previous record of 29,111 murders registered last year.[5] In Central America, insecurity and gang violence plague the Northern Triangle of El Salvador, Guatemala, and Honduras as maras (transnational gangs like 18th Street and Mara Salvatrucha – MS-13) battle with *pandillas* (less sophisticated local gangs) and the state for power and profit.[6] In El Salvador alone, gang violence has killed nearly 20,000 people over the three years from 2015-2018.[7] In Brazil there was a record-braking 65,000 murders in 2017 and at least 6,160 people were killed by police, in 2018, even though national homicide rates fell.[8]

Drug trafficking, organized crime, political instability, corruption, and impunity fuel this endemic insecurity. Gangs, criminal cartels, militias (*milícias* and *autodefensas*) compete with police, the military, and state security forces for control of territory and freedom of action. Here gangs and criminal cartels become Violence Non-state Actors (VNSAs) or Non-State

Armed Actors vying for Power.[9] When the gangs directly confront police or attack the populace to further their goals a situation of 'criminal insurgency' and the use of can terrorism exist.[10]

These crime wars present a challenge to states and communities as criminal cartels and gangs seek to remove themselves from state control and gain autonomy and economic independence. As the cartels and gangs remove themselves from state control they create a situation of 'disequilbrium' and establish freedom of action for themselves while eroding state legitimacy and contributing to a 'hollow' state riddled with 'criminal enclaves.'[11] Criminal insurgency is a process of state change or transition where cartels and gangs are in a contest for competitive control of states and sub-state polities. This is essentially a battle for territorial and economic control. When cartels confront states in this manner they become political actors in addition to their role in the illicit economy.[12] Criminal insurgencies have been identified in Mexico, Central America (especially El Salvador), and Brazil.[13] Similar situations are also seen in Nigeria's petroleum insurgency and in Cape Town, South Africa's extreme gang violence.[14]

2 THIRD GENERATION GANGS/TERRITORIAL GANGS

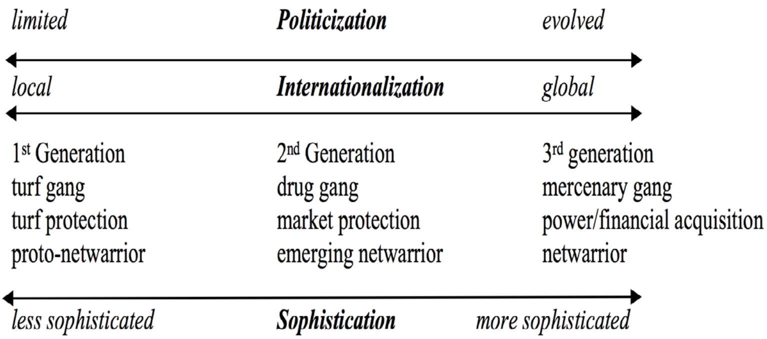
Street gangs have traditionally been viewed through the lens of delinquency.[15] The third generation gang model (3 GEN gangs) shows that some gangs have grown in scope from local, turf gangs to become more sophisticated actors. Three variables: ***politicization*** (scope for political activity, from limited to evolved), ***internationalization*** (geographic reach, from local to global), and ***Sophistication*** (from less sophisticated to more sophisticated, with the ability to adapt and forge alliances a contributing factor). The three generations of gangs can be described as follows:

- **Turf: First Generation Gangs** are traditional street gangs with a turf orientation. Operating at the lower end of extreme societal violence, they have loose leadership and focus their attention on turf protection and gang loyalty within their immediate environs (often a few blocks or a neighborhood). When they engage in criminal enterprise, it is largely opportunistic and local in scope. These turf gangs are limited in political scope and sophistication.

- **Market: Second Generation Gangs** are business enterprises. They are entrepreneurial and often drug-centered. They protect their markets and use violence to control their competition. They have a broader, market-focused, sometimes overtly political agenda and operate in a wider spatial or geographic area. Their operations sometimes involve multi-state and even international (cross-border) areas. Their tendency for centralized leadership and sophisticated operations for market protection places them in the center of the range of politicization, internationalization and sophistication.
- **Mercenary/Political: Third Generation Gangs** have evolved political aims. They are positioned at the global end of the spectrum, using their sophistication to garner power, aid financial acquisition and engage in mercenary-type activities (and territorial control). Most 3 GEN Gangs have been primarily mercenary in orientation; yet, in some cases they increasingly further their own political and social objectives.[16]

The three generations of gangs are illustrated in Table 1.

Table 1. Three Generations of Gangs



limited	***Politicization***	*evolved*
local	***Internationalization***	*global*
1st Generation turf gang turf protection proto-netwarrior	2nd Generation drug gang market protection emerging netwarrior	3rd generation mercenary gang power/financial acquisition netwarrior
less sophisticated	***Sophistication***	*more sophisticated*

Source: John P. Sullivan, "Third Generation Street Gangs: Turf, Cartels, and Net Warriors," Transnational Organized Crime, Vol. 3, No. 3, Autumn 1997.

A turf orientation is distinct from the capacity to exert effective territorial control. While all gangs have a defined operational space (turf or territory), the role of that turf or territory varies. First generation gangs are focused on protecting the gang an its members in a specific spatial domain (usually a neighborhood). Second generation gangs start to shift their focus to protecting a geographic market. In both of these 'generations' gangs don't exercise exclusive (or even a majority or plurality of control over governance). Third generation gangs may exercise significant to exclusive control in some criminal enclaves. Indeed, exerting territorial control is a hallmark of third generation gangs like the MS-13 in Central America's Northern Triangle and Brazil's prison-street gang complexes, like the PCC, Red Command, and others in Brazil's *favelas*.

Gangs stress communities. In the areas where gangs exercise significant or exclusive territorial control (i.e., a criminal enclave) they can strain government capacity, challenge state legitimacy, act as surrogate or alternative governments, dominate the informal economic sector, and penetrate or infiltrate police and non-governmental organizations to further their goals and demonstrate latent (or express) political aims.[17]

Territorial gangs (*gangues territoriais*) are seen as those gangs (and criminal cartels) that try to gain (or exercise) control of a territory where they control criminal enterprises and/or 'protect' the populace. The violence resulting from this exercise of territorial control impacts the people living in those areas, as well as the state where the gangs' dominate.[18] Third generation gangs are those most likely to exercise effective territorial control. They generate crime wars when they fight other gangs for market share and contest the state for freedom of action. The process they employ to achieve that that freedom of action is criminal insurgency.

3 CRIME WARS AND CRIMINAL INSURGENCY

The situation where gangs challenge state legitimacy and capacity while directly confronting the state can be viewed as a criminal insurgency (a specific type of crime war). As Sullivan described in his working paper "From Drug Wars to Criminal Insurgency,"

> Mexican drug cartels and allied gangs (actually poly-crime organizations) are currently challenging states and sub-state polities (in Mexico, Guatemala, El Salvador and beyond) to capitalize on lucrative illicit global economic markets. As a consequence of the exploitation of these global economic flows, the cartels are waging war on each other and state institutions to gain control of the illicit economy. Essentially, they are waging a 'criminal insurgency' against the current configuration of states. As such, they are becoming political, as well as economic actors.[19]

Criminal insurgencies can present as ***1) local insurgencies*** where gangs or criminals dominate a single neighborhood, such as a favela or colonia in a state of 'parallel governance' with the *de jure* state; ***2) battle for the parallel state*** where cartels or gangs compete with other criminals to gain control of criminal markets and access to transnational illicit economic flows; are ***3) combating the state*** in violent competition to gain and/or sustain freedom of action for their criminal enterprises; and notionally, when ***4) the state implodes*** and criminal insurgencies and crime wars spiral out of control leading to a state of endemic corruption, state failure, and the potential rise of a narco- or mafia-state.[20]

When gangs or criminal cartels capture or dominate a specific territory they hollow out state functions leading to a stratification of governance where 'criminal enclaves' are contested among criminal enterprises and states.[21] At the lowest level of concern is endemic insecurity, at a intermediate level of concern this yields 'fragile cities or spaces,' at the greatest level of concern is the establishment of 'other governed zones' ranging from 'lawless zones' to 'feral cities,' and 'parallel states.'[22] Perhaps the greatest risk of territorial capture involves the potential establishment of a 'narco-city' where 'parallel governance and stratified sovereignty becomes the de facto state of affairs.[23]

In Rio de Janeiro, the situation as described by Vianna de Azevedo, *favela* gangs dominate community life, providing alternative justice and conflict resolution mechanisms, stimulating economic activity and growth through providing employment in the black and gray markets, and promoting social activities to further their political hold and sustain parallel governance.[24] Violence and corruption combine with parallel governance to strengthen the position of gangs in their 'territory.' The gangs resort to corruption and violence when they can't elude state interference (police action) and must act to ensure their organizational survival. This allows gangs and cartels to adapt to state competition by allowing then to first, seek to elude state enforcement activities, then bribe of co-opt officials to gain freedom of action, and finally when corruption fails, the cartel of gangs use instrumental violence to directly confront the state.[25]

In Brazil, this violent competition between gangs (*gangues* or factions: *facções*) and shadow state entities or vigilante bands militias (*milícias*)—all potentially varieties of paramilitaries—leads to confrontation on the streets and in prisons. The recognition that this criminal competition with the state constitutes a form of 'societal warfare' has been growing as the challenge to the state intensifies. Alvaro de Souza Pineheiro provides an early description of Brazil's crime wars. He describes the situation as 'irregular warfare' against 'criminal urban guerrillas.'[26] This situation conforms with the discussions surrounding the interactions of crime wars, criminal insurgencies, and third generation gangs.[27]

The result is on-going non-ideological, low-intensity crime wars (and criminal insurgencies). The VNSAs involved include the *Comando Vermelho* (CV) – Red Command, the *Primeiro Comando da Capital* (PCC) – First Capital Command, the *Terceiro Comando* (Third Command), the *Terceiro Comando Puro* (Pure Third Command), *Amigos dos Amigos* (ADA) – Friends of Friends, and the *Comando Classe A* (CCA) – Class A Command. All of the gangs operate on the streets of the *favelas* they dominate and in prison where they consolidate their power over rival gangsters through periodic violent purges and massacres.[28] At times, the gangs project their raw power through violent attacks and bold raids (such as bank robberies). These attacks have included high visibility bombings on bridges, buses, and other infrastructure in cities, and extreme massacres in prisons.[29]

The *modus operandi* or tactics, techniques, and procedures used to exert carte and gang control range from the techniques employed by low--level criminal to sophisticated infantry tactics, the use of intelligence, and information operations. At the tactical level TTPs include: arson, ambushes (of police and military), drive-by shootings, car bombs/grenades, armed assaults, antipersonnel mines, kidnapping, blockades (*narcobloqueos*), dismemberments (mayhem), assassination (of police and military), mass graves (*narcofosas* or *fosas clandestinas*), social cleansing (leading to Internally displaced persons and refugees), Information Operations, and attacks on police, journalists, and political figures. Intelligence operations ranging from *halcones* (lookouts) to surveillance and cyber means (radio networks, and camera networks) are also employed.[30] Criminal cartels in Mexico have also used marked vehicle and identifiable uniforms; they have also used improvised armored fighting vehicles (IAFVs) and armed drones to conduct raids and assaults on rival gangsters.[31]

Essentially criminal insurgencies yield a state of 'criminal governance' where states and criminal enterprises (gangs and cartels) interact in a variety of ways. These range, according to Arias, from a state of disorder where criminals and police (i.e., the state) exert weak control over political aspects of a given community. The second is a state of 'parallel governance' where the gangsters and state engage in a contest for competitive control and power is divided. A third option is one of 'collaborative governance' where criminal co-opt the state and interact to share power, and in a third 'neo-feudal' option this collaboration evolves into a situation of stratified (i.e., layered or tiered) governance where criminal and the state interact in a variety of ways to exert power and social control.[32]

The process of 'Co-opted state reconfiguration' (CStR), as defined by Garay and Salcedo-Albarán, drives the reconfiguration of power in criminal insurgencies.[33] The gangs and criminal cartels involved, link with other criminal enterprises, such as transnational mafias like the 'Ndrangheta, to further their aims. The result is a dilution of state power as state authority and control becomes shared or usurped by transnational networks. This configuration could be called a 'network state.'[34]

4 HIGH INTENSITY CRIME, CIVIL STRIFE OR NON-INTERNATIONAL ARMED CONFLICT?

Characterizing the nature of crime wars and criminal insurgencies is problematic. The terms crime wars and criminal insurgencies are description of the conflicts not legal definitions. Determining the proper (and most effective) legal regimes to address these fluid and dynamic conflicts is a significant challenge. As Muggah and Sullivan noted, "The problem, it seems, is that while the insecurity generated by these new wars is real, there is still no common lexicon or legal framework for dealing with them."[35]

At the lower end of the spectrum criminal law prevails. In some places intense gang violence has led to new statutes targeting gangs and gang activity as seen in the California *Street Terrorism Enforcement and Prevention Act* (1988) which provides sentencing enhancements for gangs activity.[36] As the intensity of violence increases, it is possible to consider the acts as something more than civil strife. In these situations, the existence of a Non-International Armed Conflict (NIAC) under International Humanitarian law (IHL) is plausible. Indeed, recent analysis increasingly looks at crime wars and armed gang violence through the lens of NIACs. A notable example is the assessment of the Geneva Academy's Rule of Law in Armed Conflicts (RULAC) project, which has determined that the Government of Mexico is involved in a NIAC against (at least) the Cartel Jalisco Nueva Generación (CJNG).[37] In these situations, all parties are bound by *Article 3 common to the 1949 Geneva Conventions* in addition to international human rights law.[38]

Armed conflicts involving criminal organizations (gangs cartels, and mafias) fall within a gray area under IHL. The factors involved in determining if a group is a belligerent under IHL party to a NIAC are the group's status, their organization and the intensity of the interactions. Therefore the elements to be considered are: 1) are they armed and organized and sufficiently organized to honor IHL obligations for a NIAC and to wage sustained military operations; and 2) are the hostilities of sufficient intensity (scope and duration) to become a low intensity or high intensity non-international armed conflict. While explicit 'political' motivations is not required for a conflict to rise to the level of a NIAC, many crime wars and criminal insurgencies do contain political dimension, including territorial control and political and even electoral influence.[39]

5 CONCLUSION: LEGAL REGIMES AND COMMUNITY TRUST

Addressing the challenge to states and containing crime wars and criminal insurgencies requires an adaptive mix of strategies. In the short--term military support to police—as seen in Brazil's Law and Order Assurance Operations (*missões de Garantia de Lei e Ordem or GLO*) —can help stabilize the situation, but to be successful in the long-term community trust must be restored to allow the police to effectively operate in the communities they serve.[40] The series of 'new wars' challenging states ranging from Mexico, to Central America, Colombia, Brazil, and South Africa demand an assessment of the rise of crime wars and criminal insurgencies. This involves recognizing tactical and operational challenges to policing and state security. It requires assessing the interactions between the police, military and intelligence organizations and their collective interactions with the judiciary and political organs of state.

Restoring and expanding this public trust requires tactical proficiency, co-operation from all levels of government, and deployment of the most effective legal regime available. This may require enacting new criminal laws or penal codes, it may require augmenting criminal law with IHL in cases where the violence rises to sufficient intensity and organization to constitute a NIAC, it certainly must respect International Human Rights Law, and it must sustain the Rule of Law while protecting the community and sustaining human rights and due process.[41] Since many criminal networks integrate local gangs and cartels into transnational criminal networks, bi-lateral and multi-lateral interactions among states must also be nurtured.

A first step to calibrating the various legal regimes and perhaps the evolution of a new legal regime for crime wars and criminal insurgencies is accurately assessing the situation, the character of violence, and the impact of these new wars and criminal conflicts on states and their populace.[42]

NOTES

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[20] Ibid.

[21] See Sullivan, “From Drug Wars to Criminal Insurgency: Mexican Cartels, Criminal Enclaves and Criminal Insurgency in Mexico and Central America. Implications for Global Security” and John P. Sullivan.

[22] Ibid. On ‘feral cities’ see, Richard J. Norton, “Feral Cities,” *Naval War College Review*, Vol. 65, No. 4 (Autumn) 2003, pp. 97-106 and Richard J. Norton, “Feral Cities: Problems Today, Battlefields Tomorrow?” *Marine Corps University Journal*, Vol. 1, No. 1 (Spring 2010): pp. 51–77 and Robert J. Bunker and John P. Sullivan, “Integrating feral cities and third phase cartels/third generation gangs research: the rise of criminal (narco) city networks and Blackfor,” *Small Wars & Insurgencies*, Vol. 22, No. 5, 2011, pp 764-786.

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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, https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-19-comando--classe-cca-massacre-comando-vermelho.

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[38] *See Common Article 3*, (Article 3, common to the four Geneva Conventions), https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/WebART/365--570006?OpenDocument; also consider *Protocol Additional to the Geneva*

Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument.

[39] See Ivan Briscoe and David Keseberg, "Only Connect: the Survival and Spread of Organized Crime in Latin America," *PRISM*, Vol. 8, No. 1, 26 February 2019, https://cco.ndu.edu/News/Article/1767435/only-connect-the-survival-and-spread-of-organized-crime-in-latin-america/.

[40] 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, https://smallwarsjournal.com/index.php/jrnl/art/third-generation-gangs-strategic-note-no-5-brazilian-military-stability-and-support and 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*, 24 February 2018, https://smallwarsjournal.com/index.php/jrnl/art/third-generation-gangs-strategic-note-no-10-military-takes-control-policing-rio-de-janeiro.

[41] This is a complex yet potentially rewarding endeavor. See Christine Chinker and Mary Kaldor, International Law and New Wars, Cambridge: Cambridge University Press, 2017; Kenneth Watkin, Fighting at the Legal Boundaries: *Controlling the Use of Force in Contemporary Conflict*, Oxford: Oxford University Press, 2016; and Carlos Frederico de Oliveira Pereira, *Gangues Territoriais e Direito Internacional dos Conflitos Armados*, Curitiba: Juruá Editora, 2006 for a starting point in assessing the current legal situation and potential ways forward.

[42] John P. Sullivan, "New Wars in the City: Global Cities – Global Slums, *Stratfor*, 4 July 2018, https://worldview.stratfor.com/horizons/fellows/dr-john-p-sullivan/04072018-new-wars-city-global-cities-global-slums.