# Non-International Armed Conflict: Mexico and Colombia

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Crime wars[i] and criminal Insurgencies[ii] challenge states as they emerge at the intersection of crime and war.[iii] In many nations these conflicts involve protracted gang and drug wars. These situations of insecurity range in the level of intensity and complexity. At times the lower levels of violence result in local consequences: violence and insecurity. In others the criminal organizations challenge the state and establish alternative of parallel power structures. This short paper will discuss these issues by briefly summarizing the situation in Mexico and Colombia. This summary will then identify the need for further research and development of legal and policy approaches in these states, as well as others facing similar challenges such as Brazil[iv] and Central America.[v]

**Crime Wars, Criminal Insurgency, and Third Generation Gangs**

Drug and gang wars are waged by a range of non-state actors in collusion with corrupt government officials (at all levels of government from local to national). These actors are part of a global illicit political economy and are political as well as economic actors. While they use violence—or wage 'war'—against their rivals and governments, they also accrue political power and assume role of criminal governance in order to secure community support. The areas dominated by these alternative power structures (gangs, militias, and criminal cartels) range from small neighborhoods or favelas through larger sub-state regions. Collectively these 'other governed areas' are 'criminal enclaves' where the criminal armed groups (CAGs) use instrumental violence, corruption, information operations, attacks on journalists, government officials (judges, police, mayors), street taxation (extortion), and the utilitarian provision of social goods—the provision of humanitarian aid during disasters and pandemics—to sustain power.[vi]

These irregular conflicts among a range of CAGs (gangs, militias, criminal cartels) pit armed non-state actors against themselves and the state and its organs. Normally, this is a matter for civil law enforcement and community policing. When the situation reaches higher levels of criminality it becomes high-intensity crime, terrorism, and/or quasi-terrorism.[vii] While gangs and criminal enterprises don't directly challenge the state, that is they don't threaten the existence of the state or possess overt political dimensions that allow 'power-counterpower' dynamic some can have profound influence on state solvency (the sum of capacity and legitimacy).

Gangs can be characterized as existing in three 'generations' of spatial reach, political potential, and sophistication. These can be described as *First Generation* or 'turf' gangs that are local in nature, have limited political dimensions, and low levels of sophistication (this is the classic street or youth gang involved in group protection). The *Second Generation* or 'market' gang is involved in narcotics trafficking and other criminal

enterprises. It has a broader spatial or territorial reach existing throughout individual nations and at time extending across borders. This gang form may have latent or emerging political dimensions and evolving levels of sophistication. The *Third Generation* gangs are mercenary or political actors that directly challenges states, has a transnational or international presence and network connections. They control territory, have evolved political aims, and operate at high levels of sophistication.[viii] Third generation gangs have influenced gang evolution throughout the Western Hemisphere.[ix] They are also called territorial gangs and maintain alliances with other global criminal enterprises and operate on both the street and in prisons though 'prison-street gang complexes.'[x] These 'Third Generation/Territorial gangs wage "criminal insurgencies' against the current configuration of states and possess the potential to reconfigure governance and the nature of states.[xi] This requires an assessment of current policy and legal approaches to managing and containing gang violence and the political influence of criminal armed groups (CAGs).

**When Crime Wars Rise to the Level of Non-International Armed Conflict (NIAC)**

Criminal violence usually is treated as a matter of penal law. That is, it is a crime punished by the state, managed by the police and criminal justice system under penal laws and through civil courts consistent with international human rights law (IHRL). This is a law enforcement situation even when the situation matures to one of high intensity crime and civil strife. Only when the level of armed violence reaches a level of sustained *intensity* and the non-state group possesses a level of *organization* that allows the group to exert command and control over its members and meet its obligations under International Humanitarian law (IHL) does the situation become one of non-international armed conflict (NIAC). State forces—including the police and military—have presumptive organizational capacity.

The motivation of the parties to armed conflict does not preclude designation of a criminal conflict as an armed conflict.[xii]

Here, two cases are pertinent to the discussion: Mexico and Colombia.

***Mexico***

In Mexico, at least three non-international armed conflicts currently exist. First, according to the assessment of the Rule of Law in Armed Conflicts (RULAC) initiative, the Government of Mexico (GoM) is involved in two parallel NIACs.[xiii] These include the state's struggles with the Cártel de Jalisco Nueva Generación (CJNG)[xiv] and the Cártel de Sinaloa (CDS).[xv] In addition, the violence between the Sinaloa Cartel and CJNG is also a NIAC.[xvi]

The situation involving the CJNG is currently a significant challenge with extreme violence on many fronts. The CJNG is battling its rival cartels—including Sinaloa/CDS) and the Cártel Santa Rosa de Lima (CSRL) in Guanajuato and the Cárteles Unidos in Michoacán. These criminal conflicts involve the use of infantry tactics, marked armored vehicles (Improvised Armored Fighting Vehicles), and weaponized aerial drones.[xvii] In one recent CJNG drone attack, two police officers were injured.[xviii] Direct CJNG attacks on police and military forces are persistent.[xix] The CJNG is presently engaged in an offensive to seize control of Tepalcatepec, Michoacán in Mexico's Tierra Caliente. This offensive has been sustained, starting in 2019 and involves combat with the Los Viagras gang, now part of the Cárteles Unidos, and police including the Guardia Nacional. The conflict has led to scores of deaths and internally displaced persons throughout the region.[xx]

Conflict between the Sinaloa cartel and GoM has a long history. Armed confrontations with state actors, including high profile arrests have punctuated the competition between the state and the CDS. In recent times,

these confrontations are epitomized by the thwarted arrest of Ovidio Guzmán, the son of incarcerated Sinaloa capo Joaquín 'El Chapo' Guzmán Loera, in Culiacán. This attempted raid and capture resulted in intense street fighting between government forces and the Sinaloa Cartel. Cartel *sicarios* (gunmen) brandished automatic weapons, established blockades (*narcobloqueos*) consisting of burning vehicles, and repelled government forces using their superior knowledge of local terrain, a network of *'halcones'* (lookouts), and artisanal armored vehicles mounted with .50 caliber machine guns reminiscent of the 'technicals' utilized by insurgents worldwide. The Sinaloa cartel won the urban battle.[xxi]

***Colombia***

Colombia is engulfed in a series sustained NIACs despite the 2016 peace agreement.[xxii] Specifically, Colombia is "involved in parallel NIACs against the Ejército de Liberación Nacional (National Liberation Army) (ELN) and the FARC-EP dissident group (Bloque Oriental (Eastern Bloc)).[xxiii] In addition, an ongoing NIAC persists between the ELN and the Gaitanista Self-Defense Forces of Colombia (Autodefensas Gaitanistas de Colombia or AGC), a BACRIM (*bandas criminales*) also known as the Clan del Golfo (Gulf Clan) or Los Urabeños.[xxiv] Both Brazilian gangs and Colombian BACRIM have sought to recruit demobilized FARC fighters.[xxv]

The Colombian insurgencies date back to the mid-1960s and persist due to the inability of the state to consolidate control over territories previously held by the FARC-EP (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo) after the NIAC between the state and FARC-EP ended. The ongoing conflicts have led to internally displaced persons, and continued combat between the ELN and state, as well as the various BACRIM and dissident FARC factions. These conflicts have led to bombings of police stations, attacks on military bases, and sustained risk to civilians. According to the International Crisis Group[xxvi] RULAC initiative,

"the intensity of violence has remained stable and continues to meet the required threshold of intensity under IHL."[xxvii]

In addition to situations involving NIACs, Colombia is experiencing violent situations that don't reach the threshold for a NIAC, such as civil strife, high intensity crime, and urban violence governed by penal law and IHRL, that nevertheless drive the need for humanitarian response.[xxviii] The ICRC (International Committee of the Red Cross) considers at least five NIACs in Colombia. These include: four between the Colombian government and the ELN, the Ejército Popular de Liberación (People's Liberation Army or EPL), the AGC, and dissident elements of the former Bloque Oriental (Eastern Bloc) of the FARC-EP that have not accepted the peace process. A fifth non-international armed conflict, involving the ELN and the EPL, is centered on the Catatumbo region.[xxix]

***Applicable Law***

Both Mexico and Colombia are state parties to the four 1949 Geneva Conventions which bind all parties of conflict to Article 3 Common to the 1949 Geneva Conventions.[xxx] Common article 3 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."[xxxi]

In addition, Colombia is also a party to the 1977 Additional Protocol II (AP II) to the 1949 Geneva Conventions. AP II is applicable to NIACs occurring "in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."[xxxii] Many of the non-state armed groups operating in Colombia have command and control structures and exert

significant territorial control making them subject to the provisions of AP II.[xxxiii]

All parties are also bound by customary international law applicable to non-international armed conflicts. In addition, all states are bound by international human rights law in situations other than NIAC and this obligation continues during times of armed conflict. Finally, "Under human rights law, the territorial state has an obligation to prevent and to investigate alleged violations, including by non-state actors. Non-state armed groups are increasingly considered to be bound by international human rights law if they exercise de facto control over some areas, such as the AGC."[xxxiv]

**Conclusion**

States of non-international armed conflict can and do exist in situations of armed interaction between states and criminal groups and in conflict between and among criminal groups themselves. This clearly holds both state and non-state actors accountable for atrocities and war crimes committed during these conflicts. However, challenges exist, as legal scholar Chiara Redaelli noted, "Although criminal organizations pursue mainly economic objectives, this does not imply that they cannot be a party to a conflict under IHL. However, even if a drug cartel is a party to a NIAC, not all its members are members of an armed group with a continuous combat function, but only the members of its armed wing. While in practice this distinction might be challenging, not every drug dealer is a legitimate target, even if they belong to a cartel that is a party to a NIAC."[xxxv]

Despite these complexities, the de facto existence of NIACs in some situations involving CAGs—crime war or criminal insurgency—may provide utility in calibrating the balance between international humanitarian law (IHL), human rights law (IHRL), and criminal or penal law.[xxxvi] The continuing challenge to states posed by criminal armed groups blurs the status of crime and war.[xxxvii] Direct confrontation with the state erodes state

authority and legitimacy and emboldens, as well as empowers criminal actors. Endemic violence and insecurity coupled with corruption and state insolvency in addressing these challenges demands an examination of the balance between several legal regimes. There is a need to assess and calibrate the various legal regimes—including the law of NIACs—for addressing criminal armed groups (CAGs), including gangs and militias that directly confront states. This assessment must include robust protection of human rights and civil liberties, but must also protect the victims of the chronic violence and sanction the corruption and impunity that facilitates the erosion of state capacity and legitimacy (collectively solvency) while holding states accountable for its actions in preserving the rule of law.

## Endnotes

[i] Robert Muggah and John P. Sullivan, "The Coming Crime Wars." *Foreign Policy*. 21 September 2018, https://foreignpolicy.com/2018/09/21/the-coming-crime-wars/

[ii] John P. Sullivan, "Criminal Insurgency in the Americas." *Small Wars Journal*. 12 February 2010, https://smallwarsjournal.com/jrnl/art/criminal-insurgency-in-the-americas.

[iii] 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 N°9*. Paris: Fondation Maison des sciences de l'homme, April 2012, https://halshs.archives-ouvertes.fr/halshs-00694083/document.

[iv] See, for example, Christain 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, https://smallwarsjournal.com/jrnl/art/criminal-insurgency-brazil and Claudio Ramos da Cruz and David H. Ucko, "Beyond the *Unidades de Polícia Pacificadora*: Countering Comando Vermelho's Criminal Insurgency." *Small Wars & Insurgencies*. Vol. 29, no. 1. 2017, https://doi.org/10.1080/09592318.2018.1404772.

[v] The existence of a NIAC in the Northern Triangle of Central America (El Salvador, Honduras, and Guatemala) is controversial as some analysts see the prevailing gangs or *maras* as lacking the organizational capacity to sustain state of armed conflict. Nevertheless, the level of violence is intense, the *mara*s exert territorial control and provide criminal governance, the state has negotiated truces with the gangs, and the gangs have penetrated many state organs, especially municipal governments. See Anna Applebaum and Briana Mawby, "Gang Violence as Armed Conflict: A New Perspective on El Salvador." *Policy Brief: Georgetown Institute for Women, Peace and Securit*y. November 2018, https://giwps.georgetown.edu/wp-

content/uploads/2018/12/Gang-Violence-as-Armed-Conflict.pdf and Kirsten Ortega Ryan, "'Urban Killing Fields:' International Humanitarian Law, Gang Violence, and Armed Conflict on the Streets of El Salvador*." International and Comparative Law Review (ICLR).* Vol. 20, no. 1: pp 97-126, https://doi.org/10.2478/iclr-2020-0005.

[vi] See John P. Sullivan, *Covid-19, Gangs, and Conflict*. (A Small Wars Journal–El Centro Reader.) Bloomington: Xlibris, 2020.

[vii] See David Teiner, "Bibliography: Terrorism and Organized Crime in Latin America." *Perspectives on Terrorism*. Vol. 14, no. 4, August 2020: pp. 118-145, https://www.jstor.org/stable/26927667. Terrorism involves acts with a discrete political motivation. Quasi-terrorist acts utilize terrorist modus operandi/tactics, techniques, and procedures (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*. Washington, DC: US Department of Justice, 1976 especially p. 5. Available at https://www.ojp.gov/ncjrs/virtual-library/abstracts/disorders-and-terrorism-report-task-force-disorders-and-terrorism.

[viii] See John P. Sullivan, "Third Generation Street Gangs: Turf, Cartels, and Net Warriors." *Transnational Organized Crime*. Vol. 3, no. 3, Autumn 1997, pp. 95-108, available at https://www.academia.edu/1117258/Third_Generation_Street_Gangs_Turf_Cartels_and_Net_Warriors; John P. Sullivan and Robert J. Bunker, "Third Generation Gang Studies: An Introduction." *Journal of Gang Research*. Vol. 14, no. 4, Summer 2007, available at https://www.academia.edu/27945015/Third_Generation_Gang_Studies_An_Introduction; and John P. Sullivan and Robert J. Bunker, "A Crucible of Conflict: Third Generation Gang Studies Revisited." *Journal of Gang Research*. Vol. 19, no. 4, Summer 2012, available at https://www.academia.edu/8459989/A_Crucible_of_Conflict_Third_Generation_Gang_Studies_Revisited.

[ix] See John P. Sullivan, "Transnational Gangs: The Impact of Third Generation Gangs in Central America." *Air & Space Power Journal – Spanish Edition.* Second Trimester (July) 2008, available at https://www.academia.edu/8459989/A_Crucible_of_Conflict_Third_Generation_Gang_Studies_Revisited and John P. Sullivan and Robert J. Bunker, Editors*, Strategic Notes on Third Generation Gangs*. (A Small Wars Journal Anthology.) Bloomington: Xlibris, 2020.

[x] John P. Sullivan, "The Challenges of Territorial Gangs: Civil Strife, Criminal Insurgencies and Crime Wars." *Revista do Ministério Público Militar.* Edição: 31, 2019, https://revista.mpm.mp.br/artigos/?idedicao=31.

[xi] See Sullivan, "From Drug Wars to Criminal Insurgency." Supra at note 3.

[xii] This was confirmed by the International Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Limaj et al.*, Judgment (Trial Chamber) (IT-03-66-T), 30 November 2005, §170. The ICTY held that: "[t]he determination of the existence of an armed conflict is based solely on two criteria: the intensity of the conflict and organization of the parties, the purpose of the armed forces to engage in acts of violence or also achieve some further objective is, therefore, irrelevant."

[xiii] "Non-International Armed Conflicts in Mexico." Geneva*: RULAC*, Geneva Academy of International Humanitarian Law and Human Rights. 30 May 2021, https://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-mexico#collapse1accord.

[xiv] See "Tracking Cartels Infographic Series: The Violent Rise of Cártel de Jalisco Nueva Generación (CJNG)." *START (Study of Terrorism and Responses to Terrorism)*. College Park" University of Maryland, Briefing #2 (No date), https://www.start.umd.edu/tracking-cartels-infographic-series-violent-rise-c-rtel-de-jalisco-nueva-generaci-n-cjng and Nathan P. Jones, "The Strategic Implications of the Cártel de Jalisco Nueva Generación." *Journal of Strategic Security*. Vol. 11, no. 1, 2018, https://digitalcommons.usf.edu/jss/vol11/iss1/3/.

[xv] See "Sinaloa Cartel*." InSight Crime*. 5 April 2021, https://insightcrime.org/mexico-organized-crime-news/sinaloa-cartel-profile/.

[xvi] RULAC Mexico, supra, at note 11.

[xvii] On Mexican cartel operations and tactics, see John P. Sullivan and Adam Elkus, "Tactics and Operations in the Mexican Drug War." *Infantry Magazine*. September-October 2011, available at https://www.academia.edu/2947778/Tactics_and_Operations_in_the_Mexican_Drug_War; Robert J. Bunker and John P. Sullivan, *Illicit Tactical Progress: Mexican Cartel Tactical Notes 2013-2020*. (A Small Wars Journal–El Centro Anthology.) Bloomington: Xlibris, 2021; and Davis Teiner, "Cartel-Related Violence in Mexico as Narco-Terrorism or Criminal Insurgency: A Literature Review." *Perspectives on Terrorism*. Vol. 14, no. 4, August 2020: pp. 83-98, https://www.jstor.org/stable/26927665.

[xviii] Robert J. Bunker and John P. Sullivan, "Mexican Cartel Tactical Note #49: Alleged CJNG Drone Attack in Aguililla, Michoacán Injures Two Police Officers." *Small Wars Journal*. 28 April 2021, https://smallwarsjournal.com/jrnl/art/mexican-cartel-tactical-note-49-alleged-cjng-drone-attack-aguililla-michoacan-injures-two. Also see Robert J. Bunker and John P. Sullivan, Editors,

[xix] RULAC Mexico, supra, at note 11.

[xx] See "Tepalcatepec under seige: CJNG launches offensive against Michoacán municipality." *Mexico News Daily*. 16 September 2021, https://mexiconewsdaily.com/news/cjng-launches-offensive-against-michoacan-municipality/.

[xxi] See RULAC Mexico, supra, at note 11; Ioan Grillo. "How the Sinaloa Cartel Bested the Mexican Army." *Time*. 18 October 2019, https://time.com/5705358/sinaloa-cartel-mexico-culiacan/; and Kevin Sieff, "The failed arrest of El Chapo's son turned a Mexican city into an urban war zone." *Washington Post*. 18 October 2019, https://www.washingtonpost.com/world/major-gun-battle-in-mexico-pits-security-forces-against-el-chapos-son/2019/10/17/c28d174a-f149-11e9-89eb-ec56cd414732_story.html.

[xxii] See Alexandra Phelan, "When Insurgent Leadership Splits: Understanding FARC's Internal Crisis Amidst a Fragile Peace Agreement." *Small Wars Journal*. 17 January 2020, https://smallwarsjournal.com/jrnl/art/when-insurgent-leadership-splits-understanding-farcs-internal-crisis-amidst-fragile-peace.

[xxiii] "Non-International armed conflicts in Colombia." Geneva*: RULAC*, Geneva Academy of International Humanitarian Law and Human Rights. 19 March 2021, https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-colombia#collapse2accord.

[xxiv] See John P. Sullivan, ""BACRIM: Colombian Bandas Criminales Emergentes." *The Counter Terrorist*. April/May 2014, available at *https://www.academia.edu/6942753/Bacrim_Colombian_Bandas_Criminales_Emergentes and "Bandas Criminales." Mapping* Militant Organizations. Stanford: Stanford University. 28 August 2015, https://stanford.edu/group/mappingmilitants/cgi-bin/groups/print_view/607.stanford.

[xxv] John P. Sullivan, "Third Generation Gangs Strategic Note No. 3: Brazilian Gangs and Colombian BACRIM Recruit Demobilized FARC Commandos." *Small Wars Journal*. 16 May 2017, https://smallwarsjournal.com/jrnl/art/third-generation-gangs-strategic-note-no-3-brazilian-gangs-and-colombian-bacrim-recruit-dem.

[xxvi] "Crisis Watch Colombia." *International Crisis Group*. March 2021, https://www.crisisgroup.org/crisiswatch/database?location%5B%5D=78&date_range=custom&from_month=01&from_year=2020&to_month=03&to_year=2021.

[xxvii] RULAC Colombia, supra at note 21.

[xxviii] "Colombia: Five armed conflicts – What's happening?" *ICRC (International Committee of the Red Cross).* 30 January 2019, https://www.icrc.org/en/document/colombia-five-armed-conflicts-whats-happening. RULAC counts three of these situations as NIACs: the Colombia state versus the ELN, the state versus the dissident FARC-EP Eastern Bloc, and the ELN versus the AGC.

[xxix] Ibid.

[xxx] See Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Commentary of 2016; Article 3: Conflicts Not of an International Character, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC. Also 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, https://www.ejiltalk.org/icrc-commentary-of-common-article-3-some-questions-relating-to-organized-armed-groups-and-the-applicability-of-ihl/.

[xxxi] RULAC Mexico and RULAC Colombia, supra at notes 11 and 21 respectively.

[xxxii] RULAC Colombia, supra, at note 21.

[xxxiii] Ibid.

[xxxiv] Ibid.

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

[xxxvi] See Muggah and Sullivan, "The Coming Crime Wars," supra at note 1 and 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, https://smallwarsjournal.com/jrnl/art/gray-zones-and-crime-suppression-between-international-human-rights-law-and-international,

[xxxvii] Kenneth Watkin, *Fighting at the Legal Boundaries: Controlling the Use of Force in Contemporary Conflict*. New York: Oxford University Press, 2016.