

PLATA O PLOMO. THE MOST SIGNIFICANT CHARACTERS OF THE MOST MODERN LATIN AMERICAN CRIMINAL ORGANIZATIONS¹

GIOVANNI TARTAGLIA POLCINI

MAGISTRADO NA ITÁLIA E COORDENADOR DO PILAR
PENITENCIÁRIO DO PROGRAMA EL PACCTO

Summary

Geo-historical and socio-economic frame. Some terminological clarifications needed. The criminal organizations in Latin America: general characteristics. Three deepen brief frameworks: the Colombian criminal organizations; the Mexican cartels; the Central American “maras” and “pandillas”. The penitentiary system as an incubator of new forms of criminal organizations. The mission of the juridical diplomacy.

Abstract

As the violence of organized crime groups linked to drugs in Latin America for decades knows no bounds, so corruption has seen the narcos progressively refine the methods to approach the public administration, also through the establishment of real negotiations at the highest levels. The recycling of narco dollars has completed the criminal design aimed to pollute the economy: today a large part of the continent suffers from the lack of security and citizens’ confidence in the institutions and from limited economic progress.

The traditional criminal groups are joined by new, even more violent organizations, in some cases able to take advantage of the security measures leaks and the malfunctioning of the penitentiary systems.

Essential, for the purpose of the success of any policy and operational program in this context, is the so-called. Knowledge Management Sharing, according to the rules of international technical assistance on justice and security. Only coordinated training, institutional reorganization, modernization of the regulatory framework and value sharing for the dissemination of the culture of legality will enable Latin America to engage sustainable development standards and, in particular, the Goal 16 of the United Nations Agenda 2030.

The peer review mechanism of the Palermo Convention, recently approved in Vienna, and training programs such as the one financed by the European Union called EL PACCTO, can offer - in this framework - an unrepeatable opportunity for a step change and the strengthening of law enforcement action at the strategic and general level.

¹ The opinions expressed in this article refer exclusively to its author and don’t reflect necessarily institutional positions; they are personal and are developed only through scientific sources, with study and research aims. We thank in particular the exchange of sources and the common reflection, Ambassador Giorgio Malfatti di Monte Tretto, responsible of the penitentiary component of the EL PACCTO Program and Mr. Antonio Mazzitelli, UNODC high official, former head unit in Mexico. Cf. James Kuykendall. *Plata o plomo*, ed. XLIBRIS CORP 2005.

GEO-HISTORICAL AND SOCIO-ECONOMIC FRAME²

“*Plata o plomo*”, “money or lead”, was the motto of Pablo Escobar’s motto, historical leader of the Colombian cartel of Medellín. Corruption and intimidation went hand in hand, moving unscrupulously from the physical elimination of obstacles, to the indebted influence to the exercise of state powers. The lemma – sadly made famous by a noir literature and a flourishing series of successes on the subject – still summarizes today, in a clear and distinct way, the operating procedures of the most powerful criminal organizations in Latin America.

The Indian-American continent is the crossroad of the most important criminal traffic and is at the center of the most important transnational investigations towards criminal networks and laundering of illicit capital (for instance, it is enough to conduct investigations of Italian National Antimafia Direction (DNA) and US DEA on international drug trafficking, the Panama Papers scandal, the Odebrecht case, the Lava Jato investigation, the La Linea trial, etc.).

Latin American organized crime, in consequence of what has been highlighted and due to objective more specific historical and sociological data, represents now a threat at the global level.

On this regard, we should consider that Europe has faced such challenges decades before Latin America, achieving good results: it is equally important to underline that the European institutional response

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- 2 G. A. AKERLOF, R. J. SHILLER (2009), *Animal Spirits: How Human Psychology Drives the Economy, and Why It Matters for Global Capitalism*, Princeton University Press, Princeton, New Jersey. G. A. AKERLOF, R. J. Shiller (2015), *Phishing for Phools: The Economics of Manipulation and Deception*, Princeton University Press, Princeton, Nj. J. P. CUALKIN (2016), *The Real Danger of Marihuana*, “National Affairs”, Issue 26 Winter. E. CICONTE, s. MANNELLI (2013), *Politici e malandrini*, Rubbettino. F. FORGIONE (2008), *Ndrangheta. Boss, luoghi e affari della mafia più potente al mondo*, Baldini Castoldi Dalai, Milano. J. C. GARCON (2008), *Mafia et Co. The Criminal Networks in Mexico, Brazil, and Colombia*, Woodrow Wilson Center, Washington, DC. T. LEVITT (1983), *The Globalization of Markets*, “Harvard Business Review”, May–June 1983. A. MAZZITELLI (2011), *Mexican Cartels Influence in Central America*, WheMsAC Florida Int. University. (2011), *The New Transatlantic Bonanza: Cocaine on Highway 10*, WheMsAC Florida Int. University. (2015), *Crimine organizzato e narcotraffico in Messico: cartelli e protomafie*, Atlante delle Mafie, Vol. 3, Rubettino. GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME (2016), *Organized Crime and Illegally Mined Gold in Latin America*. (2016), *Development Responses to Organized Crime: An analysis and Programme Framework*. R. SCIARRONE (1998), *Mafie vecchie, mafie nuove. Radicamento ed espansione*, Donzelli, Roma. UNODC (2002), *Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries*. (2010), *The Globalization of Crime – A Transnational Organized Crime Threat Assessment*. UNODC (2011), *Estimating Illicit Financial Flows Resulting From Drug Trafficking and Other Transnational Organized Crimes – Research report*. (2012), *Delinquencia organizada transnacional en Centro America y el Caribe, Una evaluación de las amenazas*. G. VALDES CASTELLANOS (2013), *Historia del Narcotráfico en Mexico*, Aguilar, *Elites and organized crime*, Insight crime.

to the threat of mafias in the last twenty years of the last century has reduced its consistency and offensiveness, through measures that, although significantly harsh, have always been implemented fully within the framework of the rule of law principles.

Also due to this value-driven consideration, the experience gained from the old continent can integrate an invaluable and historically indispensable asset for any hypothesis of effective contrast to Latin American organized crime. The circulation of European models and their hybridization with the Ibero-American institutional architecture offer a useful and viable alternative.

Finally, we should note that the affinities between Ibero-American criminal groups and traditional mafias are consistent and important: on the other hand, the now more consistent transnational nature of the most important and powerful criminal networks would increasingly encourage the adoption of an intercontinental synergic strategy of prevention and repression.

Here is a brief summary of the reasons for the approach chosen in the present intervention, which tends to offer a strategic proposal to respond in a truly effective way to the threat of organized crime in Latin America.

That said, it is necessary to start with a preliminary geo-historical analysis of the criminal phenomenon, in order to identify the most realistic legal, institutional and regulatory requirements. In this field, survey activities should always be conducted in co-ownership with the Latin American partners, coherently through a partnership approach, isolating critical issues and enhancing good practices.

In other words, any system initiative in this matter under consideration should follow the tested operational canons of bilateral and multilateral legal diplomacy in the justice and security areas³.

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The first difference compared to the rest of the world, which can be seen in the organized crime ontology, as manifested in Latin America, concerns the role of drug smuggling: specifically, in that region the criminal system that centers around illicit profits produced by drugs is at the origin of the vast majority of associative- delinquent phenomena. Elsewhere, however, drug trafficking has always assumed the different

3 See *infra* references to the biannual g20 ACWG Action Plan (2017-2018) where recognizes as a best practice model the Italian proposal on multilevel integrated technical assistance.

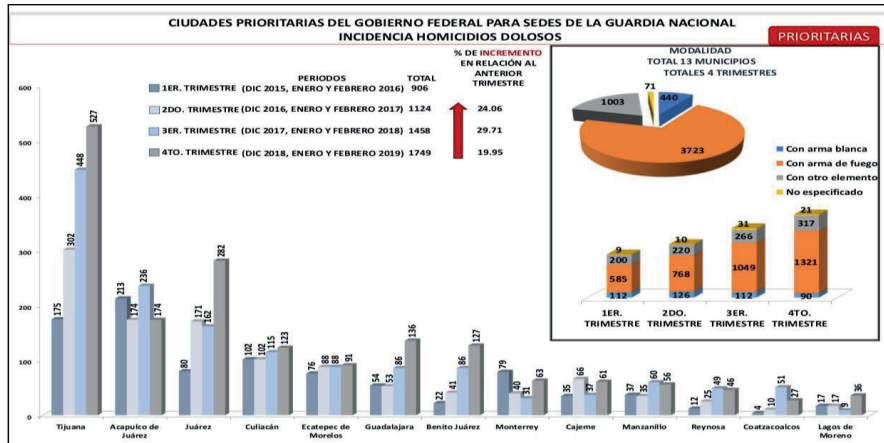
role to be driver of mafia activities and criminal networks, which existed and operated even before the spread and consumption of drugs. There are, of course, Latin American criminal organizations, however, separated from drug trafficking. Nevertheless, they constitute - in the face of others - a small minority⁴.

Another noteworthy feature, in the ontological distinguished adduced, concerns the violence dimension, conceived by the Ibero-American criminal groups as an instrument of daily operating. And indeed, at a time when all the welfare measures of the world population are constantly growing, there is only one area where lethal violence has progressively increased until today: Latin America.

The theme is of great importance and it should be investigated. The Wall Street Journal has recently published an impressive report⁵. Only 8% of the global population lives on the continent (including the Caribbean), yet, according to the UN, one third of all intentional killings in the world are committed there, the vast majority of which are committed by organized crime. In order to have terms of comparison, it is sufficient to bear in mind the fact that, in 2016 throughout China (1.37 billion inhabitants), 8,634 murders were registered, 5,351 in the entire European Union. In Latin America, there are approximately 145,000 murders per year and the relative statistics are growing; Mexico has set a new record: 8493 murders in the first quarter of 2019 alone (up 9.6% compared to 2018). A quarter of all the world's murders are committed in only four countries: Brazil, Colombia, Mexico, Venezuela; 43 of the 50 cities with the most murders in the world, including all the top ten, are located in Latin America. If you live at least 70 years in Caracas (Venezuela) or in Acapulco (Mexico), the possibility of dying from violent aggression is far greater than the world average (one in ten).

4 As well as the sectors of operation in which they are active [routes, weapons, mines and medium-environment, cyber, child pornography, etc.].

5 Latin America Is the Murder Capital of the World, Riven by drugs, gangs, weak institutions and lawlessness, the region is facing a crisis, By David Luhnow Brian L. Frank for The Wall Street Journal Updated Sept. 20, 2018 7:55 p.m. ET



Recently, an also particularly alarming statistic related only to El Salvador has surveyed the number of police force members murdered in that small Central American country⁶.

To give a further visual strength to the gravity of the phenomenon, I cite a personal experience: I witnessed a strike held by forensic doctors in El Salvador, due to insufficient staffing and the means to face the number of homicides and the necessary autopsy investigations. A similar crisis in the coroner forensic area is also evident in Mexico, where the inability of the morgues in Acapulco has recently been stigmatized, although of considerable dimensions from the beginning, and the consequent need to lease “refrigerated trucks” to preserve the bodies of the murdered, attending identification and forensic medical examinations. Thousands of corpses have no established identity. Thousands of people have disappeared without a trace.

It should still be specified, always on a general and abstract level, that we should not run into the error of considering organized Latin American crime as exclusively violent and threatening, as the first-generation European mafia. We should consider, indeed, that further characteristics, which we could define as “physiological and common”, outline Latin American criminal groups in a way that is not distinct from those active on other continents.

6 <https://m.elsalvador.com/fotogalerias/noticias-fotogalerias/559270/ellos-son-los-policias-asesinados-por-pandilleros-en-este-ano/>;
<https://m.elsalvador.com/noticias/nacional/559232/dos-policias-asesinados-durante-ataque-a-patrulla-policia-en-san-miguel/>;
<https://www.google.com/sv/amp/s/www.elsalvadortimes.com/articulo/sucesos/son-rostros-30-policias-asesinados-2018/20181228222707052998.amp.html>;
<https://m.elsalvador.com/noticias/nacional/551127/pandilleros-matan-a-un-policia-durante-una-emboscada-en-cabanas/>

In fact, transnational criminal organizations have diversified their product and service portfolios throughout the world, without giving up their cultural traditions, their classic operational tools (corruption, intimidation and violence) and their territorial competences. The mafias have built a new identity by consolidating a local dimension and developing also cross-border operations. The free movement of people and services in larger markets has unfortunately also favored the development of organized crime.

Finally, organized crime has diversified its offer by expanding it from criminal goods and services (drugs, people, weapons, etc.) to those that are criminally relevant, although less serious in terms of security, defined as illicit (gambling, betting, usury, smuggling and counterfeiting of legitimate products, etc.), to finally reach the infiltration and control of entire legitimate economic and productive sectors.

In doing so, organized crime has also shifted its center of gravity from productive economic sectors typically linked to the territory (agriculture, public procurement and construction), to areas and markets where there is greater mobility (counterfeiting, weapons, drugs, toxic waste, metals, trafficking in human beings and migrants smuggling).

Organized Latin-American crime pollutes the economy entirely, spreads its interests around the world, relates to European and Asian criminal organizations, manages a large part of global drug trafficking and expands into distant territories, recycling the huge capitals produced by drug trafficking and replicating recent operating methods in metropolitan areas.

SOME TERMINOLOGICAL CLARIFICATIONS NEEDED

One should not make the mistake of observing organized crime, even in Latin America, as an isolated phenomenon: the mafias are increasingly infiltrating the economy, through money laundering and corruption in the civil services. Only a holistic approach to the mafia issue will allow an effective response to the examined increasing global threat.

In particular, the concept of mafia and / or mafias is not shared easily at the definition level. Paradoxically it can be argued [for example] that the characteristics required by the art. 416 bis of the Italian penal

code are not linked in all types of international organized crime. Indeed, the diffusion of forms of criminal networking that reach the highest institutional levels (even up to the co-optation of entire state structures⁷), without assuming clear mechanisms of subjection and silence, involves cases of corruption that have led to the fall of governments and to the start and accomplishment of transnational judicial investigations; nevertheless, we will be able to demonstrate (although from this regional point of view only) that the dark side of the world's criminal organizations is much more homogeneous than it is believed.

Going deeper into the definitional approach, for example, one hears more and more talk about Grand Corruption, or “Cooptacion de Estado”⁸, referring to corruption cases on an economic basis that led to the fall of Governments, as well as to transnational judicial investigations. In the face of such criminal phenomena, the need to build new forms of international reaction to the danger of immunity / impunity connected to the size of the threat has been increasingly felt (see the cases of the Commission for Impunity in Guatemala [CICIG] or the MACCIH in Honduras, the first, sponsored by the United Nations and the second by the Organization of American States). Unfortunately, due to contingent geo-political reasons, the health of similar organizations is precarious and the good experience developed above all in Guatemala seems to get mark time.

In our approach on the qualification level, we will refer to criminal organizations as a complex of criminal organizations which, taking advantage of the intimidating force of the associative bond and the condition of subjection and of ensuing silence, acquire the ability: to take root in a territory, to dispose of huge economic resources, to exercise forms of control over growing portions of the local society and to present themselves on the political market both as an autonomous and specific social force, and as a dispenser of electoral consent, thus obtaining a further enhancement.

The mafias [so defined without political color and without nationality] constitute a phenomenon that affects the whole society as a capitalist degeneration that trades and uses the human as a “thing”. It can therefore be considered not so much as an inferior product of a poor society but as the emergence of a novelty destined to obtain an ever wider global affirmation. The mafia logic is traditionalist by antonomasia but

7 See *infra*.

8 Transparency International and the 2016 Anticorruption International Conference held in Panama, not a case intended to dedicate a specific focus on the issue.

it is also extremely avant-garde in the technical methods of exploiting conflicts and social contradictions. In this sense, today's relationship between corruption and the economy recalls the issue on security, the utmost importance for the community protection.

When we deal in detail with the situation of organized crime in Latin America and Central America, we can and must refer both perfectly within the Mafia schemes in the context of the Italian case of criminal association qualified pursuant under art.416 bis of the criminal code, and to different prototypes criminal networking modules, having to understand the seriousness of the threat constituted by both schemes and the convergence of the response tools.

THE CRIMINAL ORGANIZATIONS IN LATIN AMERICA: GENERAL CHARACTERISTICS

As already well mentioned above, Latin America is actually the most violent region in the world, with 30% of violent killings. There are twenty-three murders per hundred thousand inhabitants, twice as many as in Africa and five times compared to Asia. The vast majority of these crimes are linked to the organized crime's interests. This has caused a growing feeling of insecurity among citizens and the United States. In recent years, Latin American countries have experimented with different strategies to combat organized crime, some repressive and others "softer": in the first case we think in Mexico with the experience that involved a militarization of public order, or in the case of Guatemala, passed, in 2015, from a defined approach of a "hard hand" to the opposite featured by the so called "Hand bland". In other countries, were created new military police forces too. Overall, these policies are not [until now] known to be guarantee acceptable levels of security. Short term policies were unable to impact effectively on this phenomenon. Latin America, on the other hand, needs a structured response in order to reduce the level of insecurity in the region and, consequently, favor and develop socio-economic development, in line with the United Nations 2030 Agenda 16th Goal⁹.

⁹ Goal 16 is dedicated to the promotion of peaceful and inclusive societies for sustainable development, and it aims also to provide universal access to justice, and build responsible and effective institutions at all levels. The official website of the Agenda states that, among the institutions most affected by corruption, there are the judiciary and the police.

Corruption, bribery, theft and tax evasion cost developing countries about 1.26 trillion dollars a year; this amount of money could be used to relieve those living on less than \$ 1.25 a day above this threshold

Even in Latin America, the awareness emerged that there can be a clear economic development as long as there an existing such pervasive crime infiltrates the economy and public organisms: on the other hand, the issue of security is extremely important also for the undeniable fact for its relation to the exercise of human rights and to the protection of direct or indirect victims of organized crime, as well as their families.

Closely considered, the exercise of the human prerogatives, is seriously questioned in contexts that, in some extreme cases, resemble more war scenarios than accomplished societies.

It is yet to be underlined – once again – the transnational character of criminal organizations, which act easier in a context where any effective legal and operational law enforcement tools were launched. This means that any state without control and prevention systems can indirectly cause risks of infiltration for others, with consequences for the same state stability. Thus, governments together have a responsibility to work together to address jointly the global threat of organized crime.

The theme of the trans-nationality of organized crime in Latin America is expressed clearly in two cases:

- in the so called “triple frontera” (three borders), which separate Argentina, Brazil and Paraguay, and constitutes the operational field of the most dangerous drug, arms smugglers as armies and so deep to resist even the attempts of transnational response operated up to now. The circulation of criminal models in the “triple frontera” has also affected the prison system, from the point of view of the *Primero Comando da Capitale* group¹⁰ in the prisons of all three neighboring countries;
- Central America, on the other hand, represents an emblematic example of a place of “free movement of groups and criminal models”, as experimented in the so called. *triangolo norte*, an area that includes the states of Guatemala, El Salvador and Honduras, which see the institutions engaged in a daily fight against new organized criminal forms, called *maras* or *pandillas*, present almost uniformly in the most populous capitals and cities of the sub-region.

for at least six years. The rule of law and development are characterized by a significant interrelationship and mutual reinforcing, making this coexistence necessary for sustainable development at national and international level.

¹⁰ See *infra*.

With regard to similar emergency situations, which have been dragging on for more than a decade, any strategy of contrast, to be useful, must necessarily take into account two essential forming issues:

- the trans-nationality of the answer,
- technical assistance implemented through tested and shared models.

In my opinion, in large parts of the Indian-American continent the only viable way to reaffirm the Rule of Law is cooperation between states, through legal diplomacy and technical assistance activities ordered in a real strategic program. As mentioned, in order to obtain a good result, any intervention activity needs first of all a careful analysis: a need assessment conducted with care and in co-ownership with Latin American countries. In these terms, it will be useful to consider that the development of organized crime in Latin America and the Caribbean has been marked by the tendency to emphasize market-led organizations, especially transnational organized crime specialized in drug smuggling.

But the truth is that drug cartels are only a part of organizations characterized both by their ability to supply the international market and by their ability to take advantage of the local economic crime by controlling the territory.

Another trend, that an highlight is worth, concerns precisely the drug smugglers groups and their evolution with respect to the control of the territory: from an initial ambition of domination on some routes and on some drug pathways, the cartels and the Latin mafias Americans have begun to expand their sphere of invasive and pervasive operations, far beyond the rutas.

From the organizational-systemic point of view, organized crime can be considered in the region on different levels interconnected, which act on a scale of variable value in terms of profit and violence.

In the examination of the presence of mafias and criminal cartels, in a first level we find the groups of transnational organized crime related to drug smuggling in large portions of territory, following the process from the production to the sale (for example cartels). Some of these groups control a large part of the illegal drug distribution chain, but they are not a single reality. Indeed, they rely on a series of small contracted organizations specialized in the transport of illegal goods in their territories. Transnational crime organizations, for its part, manage this process from beginning to end, selling illegal goods on a large

scale in the countries of greatest consumption. The profit margins of this trade allow these groups to influence government security policies at the highest levels, to operate through their politicians, to implement large-scale economic projects and to influence social interactions at local, national and international level. Moreover, the great profits allow these groups to create partnerships and alliances.

Criminal organizations have often equipped themselves with small armies to rely on for their orders. Criminal groups in the region form these small-scale. Many of them have now cut off their contacts with their origins and operate independently, even if they are acting on a less extensive geographical area. Their economic model is based on the ability to conquer and control the territory on which they collect the proceeds of legal and illegal traffic. Unlike their predecessors, their peculiarity is represented by the capability of establishing positive interactions with government entities, and likewise developing strong partnerships. Therefore, it is explained why these second level groups generate so much violence in the region (first generation of *maras*). Their relationships with political and economic elites are based often on intimidation, rather than mutual respect and the sharing of benefits.

Third level criminal groups refer to street gangs (*pandillas*). These groups usually have mild and dynamic relations with the first and second level groups, but maintain an apparent independence. They are rather precarious organizations that survive mostly through extortion and the small drug dealing. Their morality is more related to social, ethnicity and nationality than to the economic aspect. Their identity is based in relation to rivalry with other street gangs, rather than in relation to capital accumulation or the development of long-term economic strategies. They penetrate the state too, but at a purely local level, particularly through the police who can facilitate their criminal activities. The police in fact operate as an intermediary facilitating the operations of these criminal groups. Often the police create their own criminal organizations both during the period of service and after retirement (or following the dismissal). These forces carry out various activities including: providing protection to criminal operations, facilitating the purchase of weapons, alerting or diverting investigations from criminal groups, or targeting rival organizations. Personnel armed forces can perform the same tasks as criminal groups, especially in areas where they are most active as part of a security strategy.

Political and economic elites also play an active role in facilitating and encouraging these criminal activities. First of all, they can be

partners in criminal activities or beneficiaries through money laundering and other economic projects. They can also receive funding and support for their campaigns from criminal organizations, some of which exercise considerable political power. The elites can also support indirectly criminal groups by compromising investigations, corrupting judges and prosecutors or simply removing funds from the legal system.

Finally, we must consider the fact of post-war realities (even after the numerous civil wars that affected the region), the consequent disarmament processes and the historical cohabitation (tolerant in places and conniving sometimes) between organized criminal groups and terrorist organizations, which often has complicated greatly the Latin American framework.

THREE DEEPEN BRIEF FRAMEWORKS

Not allowing the length of the present analysis more than a synthetic historical- reconstructive picture of the main types of Latin American criminal organizations, I decided to follow an approach experimented by teaching law and anti-mafia legislation. It starts from a journey through time and takes into consideration the most powerful mafias active in the region in the past, especially in Colombia, the immediately following imposition of Mexican organizations and finally the development of new forms of violent crime, especially in Central American, represented by *maras* and *pandillas*.

A) COLOMBIAN CRIMINAL ORGANIZATIONS

In the 1970s, in the wake of the conditions that favored Colombia's new international role, real criminal organizations were born, mainly dedicated to drug smuggling. The term "drug cartel"¹¹ is appropriate to define Colombian criminal organizations. In fact, although several groups were involved in the various stages of drug smuggling, two were the main organizations to consider: the Medellín cartel and the Cali cartel. The Medellín cartel is also known to international public opinion for literature and filmography. Its undisputed leader was the notorious

11 In economia con il termine cartello si indica un "accordo tra imprese concorrenti diretto a disciplinare la concorrenza" ma estendendo il significato della parola si può far riferimento ad "un'alleanza tra forze o gruppi che perseguono scopi comuni".

Pablo Emilio Escobar Gaviria. Escobar created a vertical structure for the cocaine business, capable of covering all the various phases, from cultivation to the great distribution in the USA and Europe. After the death of its leader, the top-down and hierarchical organization did not hold up starting inexorably to decline and favoring the progressive expansion of the operations of other criminal group active in Colombia, the Cali cartel. The latter, created by the brothers Rodriguez Orejuela, Miguel and Gilberto, as Escobar also sons of peasants, was structured, instead of a pyramid system, as a real “holding” characterized by a strong division of labor that was reflected in the presence of numerous small cartels specialized in a single phase of the drug production and smuggling process.

The relationship between the two cartels was a reason for an alliance at first and then entered into a real conflict situation. In the period following Escobar’s death, the Cali cartel grew stronger until they took over the cocaine export monopoly. Even the *caleños*, nevertheless, had a cycle of limited existence with a reduction to the minimum of their activities in the second part of the nineties¹².

Unlike the Medellin cartel, the Cali cartel was the silent and industrious cartel; it was in fact much more sophisticated and above all more integrated in the judicial and financial circuits of the country. The leaders of the group maintained a “low” profile not only in daily life but also in relations with politics; with the latter they preferred prudence and discretion, before corruption then only in the extreme case violence and murder. The Medellin cartel was instead more politicized and ambitious: Escobar worked personally in politics to obtain parliamentary immunity, was even elected deputy in parliament for the Liberal Party. Escobar acted politically not only to guarantee general protection for his “business” but also to protect his figure from a possible extradition to the US, where he was wanted for international drug smuggling. However,

12 Paradoxically, the end of the Cali and Medellín cartels hegemony caused in Colombia the fragmentation of the crime organizations which have changed forms and have permeated the political situation in Colombia under different aspects of daily and social life to the point that we speak about a “violent criminalization of urban life”.

In addition to the two main ones, there were also six other minor historical organizations: the *Norte del Valle cartel*, the *Cauca cartel*, *La Guajira cartel*, *Narino*, *Pereira*, *Bogotá* and *Leticia*. Among these groups the cartel of the Norte del Valle was considered “the last of the real cartels” and Diego Montoya, one of its greatest exponents, has long been considered “the boss of the Colombian narco bosses” like Pablo Escobar. However, unlike the cartels of Medellin and Cali, the organizational situation of the Norte del Valle cartel is not certain: it is a criminal association no longer active in the field of drug smuggling that operated mainly north of the Department of Valle del Cauca, in Colombia. It became important especially after the second half of the 1990s due to the fragmentation of the other two large Colombian cartels, the Medellin cartel and the Cali cartel.

Escobar's political career was destined to run out soon due to a late, if not extreme, resilience of the politics represented by Colombian interests and values. Escobar, who offered to pay the Colombian public debt in exchange for immunity, financed religious institutions, homes for the poorest, built football fields for the children and became the president of the National of Medellín football club. His partner Rodríguez Gacha instead owned the Millionarios, team from Bogotá. Escobar even owned a newspaper, the "Medellín Civico", from whose pages he sent messages to the political leaders writing to share with the guerrillas "the desire for a Colombia with greater social equality". Even Orejuela did not give up "well-targeted patronage" by supporting some private journalism universities and owning the America football team that in 1993 won the Colombian championship.

The disappearance of historical cartels has led to the spread of less relevant organizations from the point of view of territorial diffusion and control, with an increase in violence especially in large cities.

B) MEXICAN CARTELS

Many sources show that Mexico records very high figures of violent deaths typical of a country at war¹³. The United Nations High Commissioner for Human Rights (UNHCHR), Michelle Bachelet, recently said that 252.538 deaths in Mexico have been logged since 2006. The current government inherits a situation of extreme violence, but both the newly elected President López Obrador and the competent authorities have officially pledged to remedy the situation by fighting insecurity in the country, respecting human rights. Mexico, besides being an important geopolitical actor in the region (it is a G20 country) and an economic protagonist of the international scenario (it has great natural resources and a flourishing industry), is considered one of the main centers of world drugs smuggling. It is a country in which a campaign of violence has been going for years, which has caused thirty-three thousand "desaparecidos" in the last decade.

The concentration of cocaine production in South America is the starting point of all the routes that, in their initial part, are macro-flows directed to consumer markets. If North America is the landing

13 <https://www.proceso.com.mx/578949/mexico-tiene-cifras-de-muertes-violentas-propias-de-un-pais-en-guerra-bachelet>

place of the first flow, the second is Europe. Starting from the Atlantic coast, drugs go to Europe by various means of transport. The long border that separates Mexico from the United States has always been a great market for licit and illicit products and services. Therefore, it is natural that the most important organized crime groups in Mexico as well as the most relevant criminal activities and markets for Mexican criminal organizations have developed mainly along this border.

Mexico became the epicenter of the drugs smuggling, in the nineties, when, following the weakening of the Colombian narcos, which were the main suppliers of the US market, it stopped being only a transit country assuming a leading role in the production, in the management of traffic, in the determination of the price and routes.

The institution of Mexican drug cartels is due to a former judicial police officer of the State of Sinaloa, a plateau rich in marijuana and opium crops, Miguel Angel Félix Gallardo, who in the eighties controlled all the illegal drug trade in Mexico and in the corridors on the border with the United States.

Gallardo started an important flow of narco traffic towards North America and was the first Mexican to act as a link with Colombian cartels. Gallardo was arrested in 1989 and the cartel fragmented.

With the advent of the 2000s, two factors determined the breakup of the “Pax Messicana”, which until then had held up the internal balance.

The first was represented by the end of the seventy-one years of uninterrupted government of the “Partido Revolucionario Institucional (PRI)”, which caused a political power vacuum at the territorial level and the end of a determined control by federal law enforcement on the groups criminals, holders of well-defined areas in which they could trade and carry out their illicit advantages. The PRI, the party heir to the ideals of the Pancho Villa and Emiliano Zapata revolution, in its long term in power had ended up by getting involved with the cartels.

The latter consisted in the temporary drop in the demand for drugs from the United States. It reduced the revenues, and increased competition between cartels.

These events upset the system of alliances that until then had guaranteed the safety of the corridors to smugglers and favored the constitution of ten large Mexican criminal cartels. The most influential are: the “*Sinaloa Cartel*”, founded by Joaquim Guzman, called “*El*

Chapo”, which until his arrest controlled 25% of the drug market; the “*Cartello del Golfo*”; “*La Familia*”; “*Los Caballeros Templarios*” and the “*Tijuana Cartel*”.

The Mexican cartels, organized as an entrepreneurial network, with various types of agreements, which link together groups and individuals without subjecting them to a pyramid structure, manage the various phases of the activity. Their organization is, in fact, able to perform various functions in the sectors concerning the cultivation of plants (with the need for protection and camouflage), the purchase of leaves and chemical substances, the transport of raw materials in the laboratory area, the cocaine packaging and deposit supervision. These activities, together with the protection of the leaders, led to the militarization of the cartels by equipping them with armed units, used in the protection of the routes, which, more and more often, are threatened by groups dedicated exclusively to predatory activities. These militarized groups, are composed mostly of former members of the Mexican special forces, among which the most consistent is “*Los Zetas*”¹⁴.



14 It worked at the beginning for the cartels and then becomes independent so to gain market segments. It is active in many Mexican states and in various Latin American countries in drugs smuggling, in kidnapping for extortion and in other criminal activities.

Military formations assisted the other cartels, such as the Beltran Leyba for the Sinaloa cartel.

There is also the third type of criminal organization as mentioned above: in fact there are numerous local *pandillas* (in Ciudad Juárez in 1997 more than 287 *pandillas* operated, including at least 13 extremely violent).

C) THE CENTRAL AMERICAN *MARAS* AND *PANDILLAS*

Central America represents an important link corridor for drugs smuggling from the south to Mexico and the United States.

Criminal organizations handles also arms and human trafficking. Amnesty International defines Central America as a theater of war, in which its public institutions have progressively lost full sovereignty within their borders due to administrations sometimes involved in investigations into serious corruption and incapable of curbing violence. In particular, in the so-called “Northern Triangle”, formed by Guatemala, El Salvador and Honduras, violence is the basis of everyday life and cohabitation with criminal gangs in cities is the rule.



CENTRAL AMERICA POLITICAL DIVISION

I have already highlighted the sad statistics of the murders of police officers in El Salvador.

I can add a personal experience lived during a mission in Honduras to the numerical data (cold as it is such as to dismay).

At the end of the work day, the police officers assigned to my protection did not return in uniform to their homes. The Honduran policemen from Tegucigalpa [which is not the most dangerous city in the country having to give up the scepter to San Pedro Sula] consort to rent out delocalized apartments, to decontextualize the attention of the *maras* from their families¹⁵.

Naturally, this is a measure taken in a completely autonomous and prudential manner, which illustrates, however, in a particularly significant way, the level of fear that the criminal organizations under consideration incite on the population.

The origins and causes of the multi-faceted criminal phenomenon organized in Central America are various: guerrilla movements and paramilitary structures, protagonists of brutal violence, have dissolved following the creation of the democratic governments elected by the people. Many of their members, mostly young people, have not laid down their arms or entered civil society and have ended up, due to the scarce job opportunities offered by the region¹⁶, to be attracted by criminal organizations, emerging as true autonomous emerging powers.

Furthermore, another factor was the decision of the United States, in the mid-nineties, to repatriate mass immigrants in large numbers. The vast majority of these were composed of common Central American criminals.

Thus, it started to be used the term “gang”, as in the North American cities where this phenomenon originated. When we talk about gangs operating in Central America the term “*pandillas* or *maras*” is more proper: for *pandillas* we mean all local criminal groups, with *maras* we refer to a more recent phenomenon, which has its own roots among the Central Americans who emigrated to the United States in the 1960s. In El Salvador, Guatemala and Honduras the two “*maras*” have spread, the most dangerous of the continent, even more violent than the Mexican ones.

15 The police do not have the capacity to fight a force that seems for all an army of aggression. The most consistent response was the military one. The army was often used for repressive purposes – and when it achieved them – it was counterproductive.

16 The national economy is inexistent, basically due to the control of the big industries by the multinationals. The high unemployment rate and the ease of finding weapons have multiplied the chances of finding recruits willing to shed blood in exchange for something to eat.

The “Mara Salvatrucha (MS-13)” and the “*Mara 18*” or “*Barrio 18*”¹⁷, were both created by Salvadoran and Honduran emigrants in Los Angeles and Washington, the two cities with a strong presence of Central American emigration in the United States starting since the seventies.

Other countries in the area are also involved with the “*Northern Triangle*” in drug smuggling due to the presence, more or less marked, of Mexican cartels.

Costa Rica has traditionally been considered as a bastion of security in the region, but in recent years has seen a worrying increase of violence, due on the one hand to the consequences of the crises in neighboring countries and on the other to the growing role of local criminal groups in the drug smuggling. In Belize, the drug killing data is staggering. In Panama, even a president, Manuel Noriega, was accused of drug trafficking and deposed following an invasion by the US military. Its geographical position, between the Center and the South of the continent, has made it a key transit point for illicit trade, as well as an area of refuge and traffic for criminal organizations. The Mexican cartels took advantage of the fragile Panamanian judicial system and of the extensive corruption to infiltrate the local system. Finally, as far as Nicaragua is concerned, the recent political events are now bringing it to the brink of a civil war.

A note from the Justice Department reports that, the politician Mario Estrada with his partner Juan Pablo Gonzalez conspired asking for the Sinaloa cartel to become president.

The recent announcement that Mario Estrada, Guatemala’s presidential candidate for the minority party of the National Union of Change (UCN) – although without any real chance of winning the June elections, however candidate and active participant in the electoral campaign – represents the confirmation of how the Central American situation in some sectors is significantly in danger. The Guatemalan

17 The two main maras, the “13” and the “18”, took their name from the streets of the cities they controlled. The “MS-13” has about sixty thousand affiliates dedicated to a very differentiated criminal activities and allies in the global galaxy of the crime; it does business even with the Japanese and Asian Gulf Mafia. It is also active in the trafficking of human beings, especially Central American citizens who are smuggled to the United States, and operates mainly in urban areas. The “*Barrio 18*” has a slightly lower number of members of different nationalities, although in the vast majority Hispanics. Its main activity is drug trafficking, which allowed to create close ties with Mexican cartels and recruit its members in schools with the promise of money and identity. The “*Barrio 18*” extends to several Central American states. The struggle for the territory and for the control of criminal activities has always caused feuds between the two “maras”, which are resolved in a spiral of bloody murders and revenge. These have created parastatal apparatuses within their respective territories. This report highlights the difficulty of fighting drugs smuggling.

politician was indeed captured in Miami (Florida, USA) with one of his trusted men, Juan Pablo González Mayorga. Both are charged with conspiracy aimed to export cocaine to the United States, as well as to import weapons.

A note from the US Department of Justice says that both Estrada and Gonzalez “use the money from the Sinaloa cartel to finance their plan to reach the presidency” by offering the cartel the possibility of using Guatemalan ports and airports as a bridge to export tons of cocaine to the territory of the United States¹⁸.

THE PENITENTIARY SYSTEM AS AN INCUBATOR OF NEW FORMS OF CRIMINAL ORGANIZATIONS

A crucial aspect of the Latin American problems is the penitentiary system. The concrete abdication of power within prisons in large parts of the hemisphere¹⁹ has made these structures into real, non-sporadic storage room for criminal groups and schools for future criminals.

This process has accelerated since the governments of the region strengthened the measures to suppress the small drug dealing and other crimes, leading to overcrowding of prisons and increasing the difficulties for the authorities to manage the sector.

In the face of any classification and management, in some prison systems, inside the prisons the pavilions take the name of the groups to which the criminals are convicted²⁰. Since there is no separation in the prison environment between common crime and organized crime, the prison becomes a place of proselytism, recruitment, radicalization and training.

The “*Primeiro Comando da Capital*” (PCC), is a paradigmatic example of similar organizations with endo-prison or intramural origin that evokes at least the mechanisms of primitive formation, the Italian New Organized Camorra and the criminal experience of Raffaele Cutolo.

It is a criminal organization born precisely from the harsh prison conditions, set up to create an alternative entity, using a rhetoric of

18 https://elpais.com/internacional/2019/04/18/america/1555556040_527061.html

19 It is enough to remember the specific issue of the program of the Mexican Minister of Interior's who just took in office.

20 For instance, Comando Vermelho, PCC.

injustice and “revenge” against the police to attract new recruits and to generate the legitimacy needed to lead in tranquility its criminal operations.

The “*Primeiro Comando da Capital*” lives, in fact, of criminal activities: it is financed through the sale of cannabis and cocaine, with extortion to prisoners or to the detriment of civilians and with robberies of banks and valuables. It is present in a network that branches out in almost all of Brazil, with rival gangs that are gradually defeated, subjugated and reduced to local “*branches*” of the group.

Linked by bonds of fidelity, unity and silence, present in a real Statute, just like any criminal or *paramafiosa* organization, the enlisted must follow a complex affiliation path, in which the new adept must be presented by an already active senior member, and be subjected to a “baptism” ceremony, having three other members as godparents. Each member of the PCC must pay monthly a sum of money to the common fund, differentiated between detained members and free members. A common practice in criminal groups of all latitudes, in which ties of solidarity and mutual assistance are created between members in freedom and members in captivity.

Today the PCC is also present beyond Brazil, in various Latin American states, engaging the jurisdiction, the police and the penitentiary system of Argentina and Paraguay.

In particular, the PCC is expanding and is considered the largest and best organized criminal group, having about twenty thousand members, multimillionaire revenues and strong support among the detainees. It orchestrated riots in various prisons of San Paolo, putting the entire city on fire for two days. It has been implicated in many kidnappings in Bolivia, in the recruitment of FARC dissidents, in drug shipments seized in Uruguay and in various murders in Paraguay, where the organization was also responsible for the largest armed robbery of the country’s history: about forty million dollars stolen with explosives from a security vault.

The organization has a vertical mafia-type structure. Like the mafias, in fact, it is established where the State and the law are weak and it proposes to create an institutional alternative. In Brazilian prisons, where prisoners’ conditions are somewhat critical, it uses the rhetoric of injustice and revenge against the police to attract new recruits and generate the legitimacy he needs to easily carry out his criminal activities.

Its bosses, despite being detained to serve heavy sentences, continue to lead proselytes from behind bars. Although one of the PCC leaders, Marcos Camacho known as “*Marcola*”, a drug smuggler and bank robber with intellectual pretensions, in an interview with a newspaper exposed fanciful political and revolutionary ideas, the organization actually has little or nothing to do with politics, with the revolution, with justice and with the misery of the favelas.

The PCC does not set out to seize the state, which is disputed confusedly with the right to pass sentences of condemnation, nor does it have a social program outside the demands of the prison population to which it guarantees, in the name of “prison brotherhood”, a support important. This includes the payment of lawyers, money for inmates and financial assistance for their family members. The agreements with groups of former Latin American Marxist guerrillas aim exclusively at criminal action.

Agreements with groups of former Marxist guerrillas in Latin America are aimed exclusively at criminal action.^{21 22}

The PCC has also managed to form similar groups in other regions of the country and to ally, for example, with the powerful “*Família do Norte* (FDN)” in Amazonia, a fundamental hub for cocaine river traffic. It aimed to emulate the Escobar project in Colombia, aimed at creating a single organization (Narcosur) for the control of the drug market in the southern continent^{23 24}.

In the northern region, the PCC has coopted part of members of the “*Família do Norte* (FDN)”, but there was no merger between criminal groups. There is a record of junction of “*Família do Norte* (FDN)” and “*Comando Vermelho*” in that region²⁵.

21 http://www.limesonline.com/rubrica/terroristi-italiani-e-guerriglieri-latinoamericani?refresh_ce

22 Giorgio Malfatti di Monte Tretto, *Economia drogata*, casa editrice Università Link Campus, Roma luglio 2019.

23 <http://www.radiocittafujiko.it/brasil-e-inferno-di-manaus>

24 <http://www.economiaitaliana.it/it/articolo.php/Da-Pablo-Escobar-a-El-Chapo-tutta-la-verita-sul-narcotraffico>

25 <https://www.bbc.com/portuguese/brasil-48428432>

https://brasil.elpais.com/brasil/2019/05/29/politica/1559086144_880397.html

THE JURIDICAL DIPLOMACY MISSION²⁶ IN THE TOPIC UNDER CONSIDERATION

Legal diplomacy allows a journey through space and time towards better regulatory models.

In space, it makes it possible to translate, share and export norms, institutes, organizational models and value systems. As far as it identifies and studies the best practices spread or established elsewhere, it allows us to anticipate scenarios, as in a hypothetical journey through time. It often happens that national models – indicated or recognized as terms of reference – rise to standards in multilateral forums and, through conventional mechanisms, end up conditioning, permeating it, tomorrow's national legislation.

The study of such phenomena in advance and in depth offers an unprecedented approach to link and govern them in the best possible way.

In a context like the Latin America, judicial and police cooperation, although admirable and efficient, are not in my opinion enough: the geographical fragmentation of criminal organizations and the new figures of crime require today a more effective preventive and repressive system. The traditional bilateral judicial cooperation agreements shall be made outdated and ineffective by the transnational character of the crime, which instead would require agreements and multilateral cooperation schemes and sometimes even in contrast with the traditional conception of state domestic jurisdiction.

The problem must be considered a priority not only by legislators and public authorities, but also by all sectors of society (educational agencies, the press, the private sector), with a view to long-term prevention programs that can reduce administrative, social and economic vulnerabilities, thus limiting the space available to gray areas, a breeding ground for global organized crime. A multi-stakeholder approach is needed.

The diplomatic action in this new sphere of law are aimed at:

- harmonizing legislation, bringing national regulatory frameworks closer to ensure fair competition between

26 A.M. DURANTE MANGONI e G. TARTAGLIA POLCINI (2019), *La diplomazia giuridica*, Edizioni Scientifiche Italiane, 2019.

- production systems and healthy competition between companies;
- consequently, favoring a transnational response to the most serious forms of crime on a global level: criminal organizations, corruption, money laundering;
- promoting the spread of Italian anti-corruption models (including those of the private sector), anti-money laundering and anti-mafia.

A really significant space for action opens today following the approval of the peer review mechanism of the Palermo Convention on the fight against organized transnational crime: Italy is a reference model in this field of action and will be, in all probability, recipient of numerous requests for technical assistance. The increasing incidence of the UNCAC review mechanism makes it wish that the establishment of a review mechanism also within the framework of the UNTOC Convention, recently approved by the Conference of the Parties (Vienna 15-19 October 2018), can have a similar impact. In light of the frequent existing links between organized crime and corruption, it can be assumed that this important development contributes, on the one hand, to strengthen the overall arsenal to counter the malfeasance and, on the other, to amplify the opportunities created by the circulation of the European regulatory models too.

Finally, the European program EL PAcCTO, an initiative aimed to help the Latin American continent in matters of justice and security, is equally important.

EL PAcCTO is a European Union program funded by the European Commission and implemented by FIIAPP and Expertise France, with the support of the International Italian-Latin American Organization (IILA) and Camões.

Its main objective is the fight against transnational criminal organizations through the enforcement of all institutions involved in the criminal sector and which are responsible for guaranteeing security and legality in 18 Latin American countries.

The program has taken on a denomination with an acronym in Spanish, evocative in the article of the intercontinental nature of the action (Europe-Latin America) and in the noun of the object and purpose of the initiative (Assistance Program against Transnational Criminal Organizations, for the rule of law and the security of citizens).

Italy has the responsibility to coordinate cooperation between penitentiary systems and is working in this direction, achieving significant results, as well as each partners in its area of action.

European efforts offer a prospect of hope for the redemption of the region and sustainable development of the entire area.

GIOVANNI TARTAGLIA POLCINI

MAGISTRADO NA ITÁLIA E COORDENADOR DO PILAR
PENITENCIÁRIO DO PROGRAMA EL PACCTO