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## **Mediation with Non-conventional Armed Groups? Experiences from Latin America**

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**BRICS Policy Center** Centro de Estudos e Pesquisas - BRICS



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# Mediation with Non-conventional Armed Groups? Experiences from Latin America

Mabel González Bustelo

## 1. Introduction

The nature of contemporary armed violence puts international mediation and other tools of conflict resolution under pressure. The traditional toolkit of conflict resolution was designed for a state-centric world and conflicts driven by political motives. But today, conflicts do not take place between states, but within them, and - very often - violence is exerted by non-state armed actors with multiple motivations and agendas. An important trend is hybridity, sometimes related to illicit economies and criminal activities. Conflict scholars and peacebuilders increasingly struggle to cope with criminal agendas.

Latin America can be defined as the “ground zero” of non-conventional violence. A peaceful region in the traditional view of conflict, some of its countries present the highest levels of violence in the world. Non-conventional actors driven by profit and embedded in shadow or illicit economies exert a great deal of violence. Gangs, drug trafficking organizations and small criminal groups emerge and operate in pockets of state fragility that can be urban (areas of Rio de Janeiro or the northern Mexican cities) or rural (as in Colombia).

Those groups are diverse in their nature and structure, can hold competitive or cooperative relations between themselves and with corrupt state agents, and are fluid and adaptive in response to external pressures. Most of them lack political agendas or ambitions to hold national power but can provide services and security to particular communities. Sometimes, vigilantes and other self-defence forces emerge as a response. State authorities use law enforcement and occasionally the military in strategies of crime suppression, in contexts of dysfunctional institutions and high levels

of corruption.

The limits of mediation and conflict resolution tools to deal with blurred agendas in conflict settings are even more evident when it comes to this region. Dealing with widespread criminality and violence in non-conflict situations has been largely considered an internal affair. However, there are examples of past mediation efforts with criminal actors in Latin America and this paper analyses some of them. The research shows that mediation, and other forms of dialogue, is more common than assumed and takes multiple forms.

The cases have been selected by their relevance in terms of levels of violence, variety of actors involved and scope of the dialogue processes. El Salvador is an exceptional case, as mediation with gangs produced a national truce in 2012 that was the first step towards a wider pacification process. In Honduras, a similar attempt in 2013 achieved little short-term results. The war in Colombia is a conflict in the traditional sense but has marked hybrid characteristics. This paper explores the demobilization of the paramilitaries and how their criminal structures affected the landscape of violence in the city of Medellin during and after the process. In Mexico, where the levels of violence have long ago surpassed those of a war, the case study is the attempt to reintegrate the self-defence forces that emerged in Michoacán as a response to violence, institutional weakness, and corruption.

This is an exploratory study based on cross-case analysis. It has been conducted through desk research including a review of literature, government reports, and journalistic accounts. Additional data was gathered through interviews with a non-probability sample of scholars, policy-makers, members of NGOs and think tanks, and journalists from different Latin American countries, the US, and Europe.

This report addresses the following questions. How has mediation with criminal groups been conducted in selected Latin American countries? What combinations of actors have been involved? What factors have affected the outcomes of those processes? What lessons can be drawn regarding mediating criminal agendas elsewhere?

## **2. The evolution of organized armed violence**

The main institutions studying trends in armed conflict worldwide report a decline in numbers since the end of the Cold War. The Armed Conflict Survey of the International Institute for Strategic Studies (IISS, 2014) found 42 active conflicts in 2014, dropping from 51 in 2012 and 70 in 2001. Petterssen and Wallensteen, analysing figures from the Uppsala Conflict Data Program (UCDP)<sup>1</sup>, point to 40 armed conflicts in 2014 (with a minimum of 25 battle-related deaths per year), of which eleven were wars (more than 1,000 battle-related deaths per year). The escalation of several conflicts and the extreme violence in Syria resulted in the highest number of battle-related deaths

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(1) For the UCDP, an armed conflict is a contested incompatibility that concerns government or territory or both, where the use of armed force between two parties results in at least 25 battle-related deaths in a year. Of these two parties, at least one has to be the government of a state. Different assessments between centres and think tanks are mostly based on the definitions and parameters used to define what is an armed conflict.

in the period post-1989 although “*compared to the large-scale interstate wars of the 20th century, the number of fatalities caused by armed conflicts in 2014 was relatively low*” (Petterssen & Wallenstein, 2015, 536).

In other words, the trends show a decline in the number of conflicts, coupled in recent years with more casualties, while some armed struggles become intractable situations of chronic violence. Today, most armed conflicts are fought within states, not between them, and irregular non-state armed groups play a significant role. Sometimes, a conflict does not even involve the regular armed forces of the given state.

The proliferation of non-state armed groups (NSA) is a defining characteristic of contemporary armed violence. This broad and loosely defined concept describes a vast typology of actors using force to pursue goals that range from political power to economic profit, social strife or religious mobilization. Schneckener (2009) defined them as groups a) willing and capable of using violence for pursuing their objectives; b) not integrated into formalized state institutions; c) in possession of certain degrees of autonomy with regard to politics, military operations, resources and infrastructure (although they may be supported by a state actor, an official or other players that obtain personal benefits from this support); and d) shaped through an organizational relationship or structure that exists over a given period.

The number of NSA has multiplied by a factor of four in the Middle East and North Africa and by five in Sub-Saharan Africa (Podder, 2012). The category includes the following types, among others:

- Rebels: the archetype of non-state armed actors, usually pursuing a political agenda.
- Militias: irregular paramilitary units that aim to defend the interests of the government and certain segments of society.
- Big Men: traditional, local authorities heading a tribe, clan or ethnic group and rooted in tradition.
- Warlords: local armed actors who control a particular territory during or after violent conflict and use private armies tied by personal loyalty.
- Terrorists: groups that use violent means to spread panic and fear in the pursuit of political goals.
- Criminals: involved in illegal activities for profit and often organized in mafia-type structures, syndicates, gangs or larger networks.

Criminal groups operate in grey or illegal markets and can be involved in drug or human trafficking, piracy, and smuggling of diverse goods and services. They lack political goals but hold complex relations with states (or parts of them). For example, sometimes groups can fill the voids left by weak or absent state institutions, while others may seek to infiltrate and co-opt segments of these institutions using bribery or violence. Organized crime is an economic phenomenon but can assume institutional roles and become a parallel power system. According to the Geneva Centre for the Democratic Control of Armed Forces they can regulate the social structure of entire communities, offering services including goods, jobs and security, and building legitimacy as a result (DCAF, 2015).

### *Complexity and hybridity*

Conflict scholars and peace practitioners have historically focused on politically-motivated groups and not on those motivated by profit. But in contemporary conflicts the distinction can become far from evident. Rebels and criminals may coexist in the same areas and eventually cooperate for



mutual benefit; groups (or parts of them) experience a transformation during a conflict or in the post-conflict period, and others have diverse and blurred agendas that make clear-cut categorizations difficult.

The trend to hybridity can adopt multiple forms. Insurgencies who fund their political struggle through kidnapping or drug trafficking, groups (or parts of them) that refuse to be demobilized after a peace agreement and continue armed to conduct criminal activities, and 'big men' and warlords involved in, or tolerating, illegal activities in their territories to capture resources and cement their patronage systems.

Political goals and criminal agendas are part of conflicts including Afghanistan, Somalia, Mali and Syria. Tuareg nationalism, Islamist jihad, kidnapping for profit and trafficking of drugs and cigarettes concur in the Sahel region (Whitfield, 2013). Hallaj argues that, in Syria, the creeds and beliefs that initiated the conflict are no longer the sole motors of violence: "*indeed, greed is increasingly shaping the nature of hostilities and the strategies adopted by armed groups*" (2015, 1). In the local political economy, each group needs to generate enough profit to provide services to the communities<sup>2</sup>. In the Libyan transition, armed and political factions are connected with extremist and criminal networks to gain influence and resources, with some groups involved in illegal arms transfers and human trafficking (El Kamouni-Jansen & Abdo, 2015).

The links and dynamics between crime and political violence are part of a new strategic landscape of conflict (Wennmann, 2015), and organized crime is recognized as an issue in peacemaking and peacebuilding. According to the Global Initiative against Transnational Organized Crime, nearly seventy percent of current UN operations work in environments significantly affected by organized crime. "*Of these missions, roughly a half holds a mandate to deal with criminal groups, directly or indirectly.*" (GITOC, 2015, 2). In 2005 the UN Security Council approved one resolution mentioning organized crime and illicit flows as threats to peace and security, and 28 resolutions in 2014. The report of the High-Level Independent Panel on UN Peace Operations mentions transnational organized crime as a mission-wide concern and a strategic risk to sustaining peace (2015).

In these complex landscapes, different armed groups operate, sometimes with mixed motivations and agendas; exert territorial and population control and protection rackets, and use symbolic violence to achieve control through terror. The result is a trend of competitive fragmentation of armed groups (Briscoe, 2013) and even the blurring of lines between situations of conflict and non-conflict.

Two documents published in 2011 raised attention to the features and consequences of hybrid and non-conventional violence. The World Development Report 2011 stated that the 21st-century violence does not fit into the categories of 20th century violence and that more than 1.5 billion people live in fragile and conflict-affected states or countries with widespread levels of criminal violence. Many of these situations "*do not fit neatly into war or peace, or into criminal violence or political violence*" (World Bank, 2011, 2). The *Global Burden of Armed Violence* described the contemporary situation as a combination of large and small wars; inter-communal political violence; criminal, gang and economically motivated violence; and interpersonal and gender-based violence. With a yearly average of 526,000 victims of violence, only 55,000 (one out of ten) died in armed conflict and the rest in interpersonal and crime-related violence outside of armed conflict (Geneva Declaration, 2011).

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(2) Phone interview with Ivan Briscoe, Clingendael Institute, August 7, 2015.

This focus on non-conventional violence examines where and how people die violently, irrespective of the classification of the situation as a conflict under International Humanitarian Law (IHL). Planta and Dudouet (2015, 3) summarized the evolution in peace and conflict scholarship as follows:

1. Conventional focus on armed conflict stakeholders with primarily political agendas.
2. Increased recognition of the inter-linkages between conflict stakeholders' political and criminal agendas.
3. Broadening actor focus, from primary conflict parties to a wider range of violent actors within armed conflict settings.
4. Extending context focus, from armed conflicts to "non-conflict" scenarios.

These cases have been defined as non-conventional conflicts that "*bear the hallmarks of armed conflict (including surpassing thresholds of direct deaths and involving groups exerting robust command and control) even if they are not formally described as such...*" (Muggah & White, 2013, 2). Conventional conflicts tend to involve contending political objectives and are, in principle, amenable to mediation and conflict resolution strategies, while unconventional violence is tied to criminal activities, not related to political agendas or end goals and not bound by rules and laws.

But the recognition of the widespread impact of criminal violence in different world regions, notably Latin America, is driving a debate about whether (and how) the tools of conflict resolution and peacebuilding can be adapted to deal with non-conventional conflicts, or whether new tools are needed.

### 3. The growing field of mediation

The use, profile and recognition of international mediation as a tool to resolve war has grown in recent decades. Eighty percent of the conflict negotiations active in 2014 involved external mediators, with actors ranging from international and regional organizations to states, Groups of Friends and specialist centres and agencies, among others (Fisas, 2015). The number and diversity of these mediating actors has prompted some authors to define this as a crowded field (Lanz & Gasser, 2013).

However, the use of mediation is neither uniform nor random, and the attention given to a given conflict tends to depend on its geographical location, impact and type. Those considered significant security threats to the international community, to civilians or a combination of the two, are most likely to draw the attention of multiple third parties (Greig & Diehl 2012). Official actors tend to mediate inter-state conflicts, while independent mediators focus more on internal conflicts of lower strategic priority, and mediate at earlier stages of a process (Griffiths & Withfield, 2010).

The UN Guidance for Effective Mediation defines it as "*a process in which a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements*" (2011, 4). For Ahtisaari & Rintakoski, it is a process of conflict resolution, "*related but distinct from the parties' own negotiations, where those in conflict seek the assistance of, or accept an offer of help from, an outsider (...) to change their perceptions or behavior, and to do so without resorting to physical force or invoking the authority of law*" (2013, 338).

Mediation seeks to reduce violence, protect civilians and eventually promote peace agreements



by prompting changes in the behavior of armed actors. Mediation is a voluntary, consent-based and outcome-oriented process. The third party provides structure and guidance while the solutions come from the parties in conflict. A basic assumption is the differentiation between behavior and person and the active position of not “demonizing” the other. De Rouen & Bercovitch describe two levels of mediation: one focused on ceasefire agreements intended to save lives in the short-term, and other aimed at more comprehensive and long-term agreements and peace processes (2012, 67).

### *Who mediates?*

The UN is the main actor in the field and has taken initiatives to expand mediation capacity. UN mediation has a global operational breadth and can be attractive for the global legitimacy it brings to the table, although it must rely on the support (and sometimes pressure) of member states. For this reason, rebel groups may fear it favors the governmental party (De Soto, 2012). Regional and sub-regional organizations have advantages such as their proximity to a conflict and knowledge of the parties, as well as leverage. On the negative side, the stronger member states may impose their perspectives, and differences hamper the ability to act. Individual states can mediate from positions of relative power and influence and gain support from others. States active in mediation include the major and some middle powers, others including Norway and Switzerland, and new players such as Qatar and Turkey.

On the non-state realm (the so-called, ‘Track II’ mediation), private organizations and distinguished individuals can mediate based on their reputation and leverage. They have more political freedom and ability to involve the local civil society and grassroots organizations that can provide in-depth context knowledge. Their role is fundamental in exploratory phases, to open communication channels and evaluate the feasibility of a formal mediation process<sup>3</sup>. Similarly, they can maintain dialogue when official channels are closed or “frozen”. The ability to act with or without official permission strengthens their role in fragile and chaotic contexts. On the downside, they lack the capacity to sustain a lasting agreement once a conflict has been resolved and need support and cooperation from official actors.

Insider mediators are a special category of non-official actors. The *Guidance Note on Support to Insider Mediators* defines them as individuals, groups, entities or institutions that enjoy high levels of legitimacy and trust with the people and institutions involved in a particular conflict setting, by virtue of their relationships and reputation with the parties, and who/which poses a unique ability to directly and indirectly influence the conflict parties behavior and thinking (UNDP, 2014). Their mandate is often implicit rather than explicit and their advantages greater in informal peace processes or at the beginning of formal ones. Their roles can also be crucial when an official process stagnates or breaks down. However, they face risks and their role and position may become difficult and “uncomfortable”, for example, when looking for a balance between delivering strong messages to the parties and maintaining their relationship (Garrigues, 2015).

The UN and the international community have increasingly recognized the role of insider mediators, amidst a general effort to strengthen national capacities. This role connects with the concepts of “infrastructures for peace” (Frazer, 2013) and “hybrid peace-making” (Kumar et. al., 2011), both referring to the need to create and strengthen capacities for conflict prevention and resolution at local and national levels.

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(3) Phone interview with Juan Garrigues, Dialogue Advisory Group (DAG), August 31, 2015.

### *Mediation with NSA*

The proliferation of non-state armed actors is not new: they have been part of wars, conflicts, and state-building for centuries. Their recognition as inescapable actors in contemporary armed conflicts comes in parallel with a growing international involvement in conflict resolution and peacebuilding. Dialogue and engagement with NSA is a challenge for states and multilateral institutions used to operating in a state-centric model of international relations and the analogous legal framework.

Schneckener (2011) described three main approaches to NSA: a) realist, based on elimination, suppression or control; 2) institutionalist, seeking to change their interests through cooption, bargaining, negotiation and third-party mediation; and 3) constructivist, trying to influence and change norms and the self-perception by the groups (identity) through persuasion and adaptation, naming and shaming strategies, and processes of transitional justice and reconciliation. Dudouet (2010) summarized the options into hard power (counterinsurgency, proscription and sanctions, international criminal prosecution) and soft power (humanitarian engagement, dialogue and negotiation, mediation and facilitation, and capacity building).

A central question is whether mediation with NSA is possible and desirable. For Withfield (2010), the arguments for engagement are rooted in principles and pragmatism. There is an imperative of protecting populations from violence (addressing human rights and humanitarian concerns with armed groups, even if no end of the conflict is in sight). Coupled with this, actors that might represent constituencies with legitimate grievances can spoil a settlement of which they have been excluded. In pragmatic terms, engagement opens a channel of communication that can be activated for pre-negotiations and used in case of emergency.

For Petrusek (2005), dialogue brings an opportunity to express demands rationally and can drive moderation. Dudouet (2010) adds that from a mediation perspective, an agreement that does not include the central stakeholders is unlikely to hold; that engagement can help move an NSA towards the political mainstream and promote compromise; and that even if engagement does not result in conflict resolution, it can address humanitarian concerns, save lives and promote democratic principles.

Arguments against involvement include the belief that no form of dialogue will have an impact on the behavior of a group and that war is a better solution; concern that democratic governments may face strong opposition and a difficult task in justifying the talks to public opinion; the risk of strengthening actors who challenge state power and enhance their legitimacy; and fear that armed groups see international participation as an opportunity to become known, and intensify violence as a means to gain a seat at the table (Whitfield, 2010).

### *Mediation with criminal groups*

Actors involved in conflict resolution and mediation are increasingly aware of the need to deal with criminal agendas (Cockayne, 2011), driven by the recognition that they are less a deviant feature than a dimension of current conflicts that needs to be addressed, and can spoil any attempt to resolve conflict. In practical terms, non-conventional actors have taken part in peace negotiations, for example in Mali. Local leaders involved in illicit economies (*the grands trafiquants*) were invited to the negotiating table in two different processes: first embedded in the government delegation and later under the label of traditional chiefs. For Planta and Dudouet (2015), the move was a recognition of their capacity to spoil agreements and of their influence on the political class and power on the ground.

Governments of conflict-affected states are often reluctant to allow dialogue and mediation with internal armed groups, including for the application of International Humanitarian Law (IHL). Opposition is stronger when widespread violence is driven by actors deemed illegal such as economically motivated NSA: organized crime, gangs or pirates.

The stakes are even higher when it comes to mediation with criminal actors in non-conflict contexts. This possibility raises many questions: Are criminally-motivated groups amenable to mediation? Is it possible to use tools and frameworks designed for armed conflict in these situations? What are the challenges and opportunities for third parties? Who are the most appropriate mediators?

For Whitfield (2013), mediating purely criminal violence is plagued with complexity and moral hazard, in contrast with the relatively familiar path of political negotiations. Practical problems include the mediator's lack of empirical knowledge about the groups; how to find representative and authoritative interlocutors; and the fear that dialogue may provide unwarranted legitimacy to illegal actors. A more fundamental question relates to the definition of the desired end-state of dialogue with criminal groups.

Cockayne has proposed caution about how much mediation can achieve on its own, and optimism about mediation as a catalyst for broader processes of socialization. This is relevant both in conflict settings and beyond: *"The mediation of differences with armed groups with criminal agendas has been historically common, and may be an increasingly common aspect of statecraft in a transnationalised economy"* (2013, 21)<sup>4</sup>.

Briscoe (2013) and others have shown that outreach strategies to hybrid and non-conventional groups do exist, but in the form of local initiatives that are mostly partial, goal or target oriented. For Muggah, truces with criminal groups are just one step and mediation should be based on a thorough understanding of their cohesion and levels of legitimacy, and be backed by a credible threat in case of non-compliance<sup>5</sup>.

## 4. Latin America: The Ground Zero of Non-Conventional Violence

Latin America shows contradictory trends in peace and security. The Uppsala Conflict Data Programme places it as the 2<sup>nd</sup> most peaceful region worldwide only behind Europe. This assessment is based on a traditional approach to armed conflict, but a broader view shows this region as the most significant example of the impact of non-conventional violence on citizen and human security.

The UN Office on Drugs and Crime (UNODC)'s *Global Study on Homicide 2013* places Latin America as the most violent region in the world. In 2012, it recorded 165,617 homicides (28.5 per 100,000; a rate four times the global average and 36% of the world's total intentional homicides). The five most violent countries in the world were Honduras (90.4 per 100.000), Venezuela (53.7), Belize (44.7), El Salvador (41.2) and Guatemala (39.9). Eight of the ten countries and 43 of the 50

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(4) Phone interview with James Cockayne, UN University, August 4, 2015.

(5) Interview with Robert Muggah, Igarapé Institute, August 18, 2015.

cities with highest murder rates per capita are Latin American (IISS, 2014). This is the only world region where homicide rates grew (by 11%) between 2000 and 2010 (UNDP, 2013). A distinctive feature is that organized crime and gang-related homicides in the Americas are an estimated 30 percent of the total, compared to less than 1 percent in Asia, Europe, and Oceania (UNODC, 2013).

But homicide alone does not account for the extent of violence, which includes kidnapping, extortion, armed robbery and assaults, and impacts such as forced displacement, trauma and marginalization. According to the UN High Commissioner on Refugees (UNHCR), in 2012 the Northern Triangle (Guatemala, El Salvador, and Honduras) registered 3,735 asylum seekers and more than 17,000 people fled as refugees. Most of this displacement is driven by gang and organized crime violence (El Faro, 2014)<sup>6</sup>. The Internal Displacement Monitoring Centre (2015) reports staggering levels of displacement, with five percent of the Salvadoran population displaced by criminal violence, and more than 566,000 IDPs in the three countries of the Northern Triangle, forced to flee by criminal violence (IDMC, 2015).

Violence in Latin America is related to non-conventional actors driven by profit, embedded in shadow or illicit economies and, often, enjoying complicity at different state levels. Gangs, drug trafficking organizations and small criminal groups emerge and operate in pockets of state fragility, both urban and rural. Most of them lack political agendas and ambition. These groups are diverse in their nature and structures, establish relations of competition and cooperation among themselves and with parts of the state, and are fluid and adaptive in response to external pressure.

For the UNODC (2012), groups involved in criminal activities can be territorial (in control of a defined geographic area) and transnational. The gangs are territorial, formed by young and excluded people, with little connections to transnational groups except in a few countries, and reliant on extortion and local control. Thriving in areas plagued by social exclusion, they mostly act at the local level but may develop international connections over time (with other gangs or with drug cartels). Drug trafficking organizations (DTO) are transnational and business-oriented and have diverse structures, degrees of sophistication and international connections. In Latin America, notably in Central America and Mexico, they tend to be extremely violent (Sampaio, 2015), fight for territories and routes using military capabilities, target the security forces and engage in fluid and unstable alliances.

Governments in this region have adopted different approaches to deal with violence. The first has been crime suppression through aggressive law enforcement, incarceration and, sometimes, the militarization of public security. In Central America, iron-first strategies and anti-gang laws have been deployed for more than a decade. These strategies show a state though on crime, in the context of a culture of control and a popular demand for harsh punishments (Basombrio & Dammert, 2011). Coupled with a partial and alarmist media coverage, hardline approaches are popular and play electoral results, although they fail to sever the links between illegal groups, business and politics, and to improve inefficient justice systems.

Comprehensive and preventative approaches to armed violence are more recent. They can involve institutional approaches to crime prevention; initiatives focused on youth at risk and weapons collection, reintegration for those who leave armed groups, and occasionally community policing. Efforts are stronger at the rhetorical level, and these programs are commonly carried out by NGOs and civil society groups without enough political and budgetary support.

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(6) For a detailed diagnostic of causes, dynamics and implications of forced displacement caused by organized crime, see CIDEHUM-UNHCR, 2012.



The third and most recent approach to citizen security is mediation and facilitation of pacts with and among armed groups, aimed at the reduction of violence. Mostly undertaken at local levels, there are some initiatives at national level. This is a highly sensitive and under-reported area in which governments and official actors need a cover of 'plausible deniability'. Some governments have denied involvement or support to these processes and others have only acknowledged their role afterward. As a result, there is a lack of in-depth knowledge about these initiatives, and no systematized analysis of their outcomes and impacts.

This situation is connected with international policies. Despite the growing recognition of the links between organized crime, illegal economies, and conflict, crime in the absence of armed conflict is perceived as integral to national sovereignty and under the exclusive realm of domestic authorities. The response model is international cooperation on law enforcement to strengthen police and justice systems.

The widespread levels of violence connected to criminal and profit-oriented actors in Latin America merit a place at the crossing line between the need for crime-based responses (mostly national, eventually with international cooperation on law enforcement) and conflict-based responses (conflict resolution, eventually with international support). But the fact that there is no armed conflict except for Colombia means that there are limits for international and multilateral engagement in conflict resolution. As an OAS Report expressed it, mediation is "*accepted and encouraged in relation to conventional conflicts (but) often difficult or discouraged in non-conventional conflicts*" (OAS, 2015, 4).

The regional security architecture is designed to deal with conventional conflict. Since the 1990s, the Organization of American States (OAS) has been dealing with interstate and internal conflicts (Herz, 2008) and involved in conflict resolution, reconciliation and post-conflict rehabilitation in Nicaragua, Haiti and Guatemala, among others. In 2003, the Special Conference on Security adopted the concept of multidimensional security, and the organization has developed a normative framework and institutional mechanisms to deal with drug trafficking, democracy, and terrorism, among other issues. This is the basis for its involvement in processes of mediation and dialogue.

### **Latin America, IHL and “Other Situations of Violence”**

The levels of violence in Mexico have surpassed the threshold of armed conflicts and generated debates on whether the situation should be qualified as such, triggering the application of International Humanitarian Law (IHL). Most scholars agree that the absence of an “insurgent” character prevents the step, although Haines argues that the case “*justifies serious consideration of the application of armed conflict standards when it comes to the application of force*” (2012, p. 25). IHL establishes limitations on the conduction of hostilities, but different analysts have warned that its application to criminal groups would implicitly legitimize the massive use of force for criminal dominance. This move “*would misapprehend the criminal syndicate’s true nature, and trigger a military approach and an accompanying legal regime that would allow for an escalation of state violence ill-suited to meeting the challenges posed by organized crime*” (Hellestveit, 2015, 8).

In Latin America, most situations fall within the International Committee of the Red Cross (ICRC) definition of “Other Situations of Violence” (OSV): civil unrest, state repression, gang and urban violence and other manifestations that have serious humanitarian consequences despite not having crossed the threshold of an armed conflict. The ICRC and other humanitarian actors are increasingly debating their role in those situations. The ICRC has conducted operations in Latin American countries that fall under the OSV category due to their humanitarian consequences. The basis for this work is the right of initiative contained in the Statutes of the International Red Cross and Red Crescent Movement and negotiated with host governments (Lee, 2014).

The approach to these situations and the violent actors involved is different from situations of armed conflict, as the ICRC does not invoke IHL and usually starts by delivering assistance (health, nutrition, etc.). Through daily interaction and trust-building, they can introduce concerns about the protection of the humanitarian facilities and staff and civilian populations (Harroff-Tavel, 2010).

The first and pilot project was conducted in Rio de Janeiro and involved confidential dialogue with the police and the Armed Forces on human rights abuses. Dialogue with militias and drug trafficking groups in the city slums had two main objectives: guarantee safe access to the population of the slums to provide humanitarian assistance, and open a humanitarian dialogue to reduce the worst effects of violence (Montenegro, 2014). In Haiti, the ICRC and the gang leaders agreed on some rules including no harm or threats to ICRC personnel, safe passage for cars and people, and safety for the wounded (Serafin, 2010). In Mexico, the ICRC is working on missing persons and their families; dialogue with law enforcement officials about the use of force (including legal frameworks, doctrines and operating procedures respectful of human rights standards), and the opening of humanitarian spaces (Maurer, 2015).

This section explores some efforts to deal with criminal agendas and groups using dialogue and mediation. The selected cases are truces between gangs and between gangs and the authorities (El Salvador and Honduras; Medellin) and mediation and dialogue to reintegrate self-defence groups (the AUC in Colombia and the Michoacan vigilantes in Mexico). The examples selected aim to provide insights into the opportunities, challenges and limits of mediation with criminally-motivated groups<sup>7</sup>.

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(7) For comprehensive lists of initiatives, see OAS (2015), and Muggah, Carpenter & McDougal (2013).



## 4.1 El Salvador: The Paramount (Lost) Opportunity?

A peace agreement put an end to the civil war in 1992 and marked the beginning of a process that involved the reintegration of former combatants, creation of new security forces and profound institutional reforms. The former rebels of the Farabundo Martí National Liberation Front (FMLN) made a successful transition to civilian and political life. But the process did not address the socioeconomic transformations needed to provide better living conditions for the majority of the population.

A complex set of factors contributed to the transformation of violence, which became criminal and perpetrated by illegal groups, mostly gangs. Born and embedded in marginalized communities, they struggle for territorial control and rely on extortion and an increasingly diversified portfolio of criminal activities. Their membership is estimated at 60,000 in the streets, 10,000 in prisons and a support network of around 400,000 (Interpeace, 2013). The two main gangs (Barrio 18 and MS-13) are highly coordinated and organized, “*structured nationwide both in and out of prisons*” (OAS, 2015). The levels of gang violence are comparable to war zones, with a rate of 70 homicides per 100,000 in 2011 (World Bank, 2015).

Salvadoran governments have attempted to suppress crime through criminal legislation, *mano dura* (iron-fist) strategies, and occasional militarization of public security. These policies had limited impact, but helped to cement the electoral support of a population angered and traumatized by decades of violence. In 2009, the FMLN won the presidency by a tiny margin, and by an even smaller sliver in 2014, overturning 20 years of rule by the right-wing Nationalist Republican Alliance (ARENA).

In March 2012, the investigative outlet *El Faro* surprised the country with the news of a truce between MS-13 and Barrio 18<sup>8</sup>. Imprisoned gang leaders were transferred from maximum-security prisons to standard facilities to facilitate communication with the rank-and-file in the streets. In their first joint communiqué, the gangs recognized being part of the problem of violence and their will to be part of a solution. The groups agreed to end the forced recruitment of children and youth, respect schools and buses as zones of peace and reduce attacks on the security forces. The drop in homicides was immediate—from fourteen per day to five. The monthly figures plummeted from 402 in February 2012 to 156 in April, with a sustained 60 percent reduction up to April 2013.

Further reports on this process made clear the central role played by two mediators: former insurgent and government advisor David Munguía, and the Catholic Bishop Fabio Colindres. Through months of confidential dialogue with the imprisoned gang leaders, they managed to build trust and eventually break an agreement and a commitment to reduce violence in exchange for improved prison conditions.

Initially, the government refused to admit any role or participation in the process. But the Minister of Justice and Public Security, David Munguía, finally acknowledged his crucial role as facilitator by allowing the mediators to access jails and talk to the gang leadership. In June 2012, President Mauricio Funes presented a National Agreement for Security and Employment to international representatives and donors, asking for their support for the initiative.

The process received early support from the Organization of American States (OAS) through the

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(8) It must be noted that attempts to dialogue with the gangs date back at least a decade, sometimes involving authorities and also NGO and leadership of the Catholic Church.

Secretariat of Multidimensional Security. This organization had conducted a confidential diagnostic of the security sector and presented the results to the government at the end of 2011, a dialogue that preceded and allowed further engagement once the truce was brokered.

In June, the gangs presented a *Framework Agreement for the Recovery of Social Peace in El Salvador* including reform of the prison system; a public-private body with gang participation to oversee rehabilitation and reinsertion; derogation of the anti-gang law and removal of the army from public security duties. There were no demands for amnesty or reduction of prison sentences, but the document proposed that the Secretary General of the OAS act as a guarantor, integrating actors from the international community and ensuring compliance with the terms of the truce (Blackwell, 2013b). In July 2012, the Secretary General José Miguel Insulza visited imprisoned gang leaders and supervised the symbolic surrender of a small number of weapons.

In September, the participation of the OAS was formalized through the creation of the Committee for Technical Coordination of the Process of Violence Reduction in El Salvador (Government – OAS). An additional step was the creation of the Humanitarian Foundation, integrated by civil society and business leaders with the aim to promote and encourage national and international engagement and provide a channel for aid and support. For the first time since the war, the International Committee of the Red Cross (ICRC) was invited to contribute and in October 2012 it established a special mission to monitor human rights in prison. By the end of 2012, smaller gangs and the two main associations of imprisoned persons also joined the process.

The dramatic reduction of homicides opened the opportunity for a wider peacebuilding strategy. In 2013, the process entered the so-called “second phase”, involving territorialisation with the creation of violence-free municipalities through agreements between local authorities, civil society (local churches and businesses), gangs, and the facilitators. The bands committed to cease violence and crime in the area in exchange for a reduction in police operations and raids, reinsertion programs and community development. Gang members would give up their arms in exchange for participation in community affairs.

The first four municipalities were established in January 2013 and soon extended to eleven with a combined population of more than one million (out of six million in the country). Most were areas with the highest levels of gang membership and violence. Mayors from both main parties, the FMLN and ARENA, participated. They received backing from the OAS and the European Union, who supported the process through the project “Support to violence reduction in El Salvador”, implemented by the Humanitarian Foundation with the technical support of Interpeace<sup>9</sup>. In April 2013, President Funes visited Washington to gain political support for the process, followed days later by members of the CTC.

But in May, a major setback took place when the Constitutional Court nullified the appointment of Munguía as Minister of Justice and Public Security, forcing Funes to restructure the security cabinet. The new minister, Ricardo Perdomo, was a sharp critic of the truce and soon restricted the role of the mediators and their access to jails, and sent back the gang leaders to maximum-security prisons. Amidst a polarized debate leading up to the February 2014 presidential election and contradictory statements by members of the government, the result was a weakened process. The downward trend in murder rates began to reverse, amid a turf war between two factions of Barrio 18.

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(9) Phone interview with Ana Glenda Tager, Interpeace, September 17, 2015.

### *A process in reversal*

The public position of the government was ambivalent and contradictory, despite the evidence that Minister Munguía had promoted and facilitated dialogue. For months, the President and other figures denied involvement, and only later accepted their role and asked for international support. Policies mirrored these contradictions: the government committed to providing grants and loans for violence prevention and rehabilitation in the “pacified” areas and then failed to fulfill their promises.

The lack of a unified strategy was also evident in the actions of the security forces that continued their raids in poor communities and massive detentions of youth. The National Civilian Police (PNC) and the Army detained more than 85,000 persons in 2012, most of them young men living in poor areas. Of them, less than a three percent was prosecuted (Interpeace, 2013).

The OAS was critical to provide political support and international legitimacy, and the EU backed the process from early stages. The UN Development Program (UNDP) described the truce as an opportunity to work effectively in the insertion, reinsertion and rehabilitation of at-risk youth and gang members (Smutt, 2013). But the US, highly influential in this country, was against the truce. In October 2012, it designated the MS-13 as a Transnational Criminal Organization (TCO), a move followed by a travel warning to El Salvador. US officials expressed more or less public condemnation at a process seen as a government negotiating with criminals and an implicit admission of the loss of control over national territory. They also criticized the engagement of the OAS.

At the beginning of 2015, the new (FMLN) President Salvador Sánchez Ceren announced the official end of the process and a renewed effort to defeat the gangs through the strengthening of security forces. Violence is on the rise, reportedly including executions by the security forces. August 2015 was the bloodiest month since the end of the civil war, with more than 900 homicides recorded by the PNC (Gagne, 2015). Also in August, the Supreme Court of Justice declared the gangs “terrorist groups”.

### *Analysis*

The Salvadoran process merits special attention for its national scope and agenda, which evolved from the initial truce to a wider pacification process. In terms of strategy, mediation proceeded in phases. The first involved months of confidential dialogue to reach an agreement between the gangs with defined contours and measurable indicators: immediate changes in gang behavior (violence reduction) in exchange for deliverables by the government that were limited, legal, and feasible (relocation and revision of prison conditions). The leadership of the gangs showed political maturity and an understanding of what could be achieved within the framework of this process (no petitions for amnesty or reduction of sentences), as well as a strong command-and-control over the street networks. The agreement and the immediate results were trust-building actions that opened the door for the negotiation of more challenging issues, such as the municipalities of peace.

But the process faced several obstacles. The main opposition came from conservative sectors, parts of the legal establishment and law enforcement, and the media. One of the most vocal opponents was the Attorney General, reportedly supported by members of the State Department and the US Embassy. Contributing to skepticism were unabated levels of extortion and other violent crimes, such as disappearances. There was also a widespread perception (not uncommon in conflict areas) that violence was being rewarded.

Two insider mediators were able to gain the trust of the gangs and the government, particularly

Minister Munguía. But this trust was never complete, as shown by the contradictory positions of the administration, mirrored by a lack of commitment regarding funding and inter-agency coordination. Any mediation process must balance the strategic need of discretion to keep the talks going with levels of transparency and accountability. The gap between rhetoric and action and the lack of an effective communication strategy contributed to feeding distrust and confusion among a public opinion that remained skeptical and polarized.

Public security and how to handle crime is a core matter of electoral politics in El Salvador. The ideological and political polarization that permeates this society was utterly expressed during the truce. The population firmly rejects the gangs and this opposition was further driven by the (mostly elite-controlled) media. In this context, the OAS Ambassador Adam Blackwell admitted that the absence of a communication strategy “was a mistake,” especially in the framework of a highly polarized society where mediation and the aim of finding common ground are particularly challenging<sup>10</sup>.

The role of external actors was paramount. The OAS was critical for facilitating and building legitimacy and international support (for example, from the European Union). On the contrary, the US opposition had a strong negative influence as El Salvador is highly dependent on this country in economic, commercial and assistance terms.

## **4.2 Honduras: Stopping at the first steps**

With an average rate of 90 homicides per 100,000, Honduras has been for years the most violent country in the world (World Bank, 2015). More than 21,000 people were killed (mainly with firearms) between 2011 and 2013, according to the Observatory of Violence of the National Autonomous University (Chávez & Ávalos, 2014).

The landscape of violence is different from the Salvadoran case. Gangs are involved in extortion and drug trafficking, but the figures of homicides attributable to them are disputed, and national and international actors diverge in their interpretations about the share of responsibilities. Honduras is the country with more denounces of complicity between police members and illegal actors in the commission of crimes (Interpeace, 2011). Up to a 40 percent of police forces could be involved in organized crime, according to top officials (Graham, 2011). Honduras is far more strategic than El Salvador as a corridor for drug trafficking, and the local market is bigger. For the OAS, around 70 percent of the homicides are perpetrated by drug cartels involved in turf wars for the control of routes, sometimes using gang members and youth as hit men or sicarios (OAS, 2015).

However, the narrative prevailing in the country puts the blame of violence on gangs, which are highly stigmatized as a result and become victims of extrajudicial executions carried out by death squads linked to the security forces (Casa Alianza, 2010). Security policies have followed the iron fist approach aimed at crime suppression.

Only a few actors have tried to approach the gang problem differently. Prominent among them is Rómulo Emiliani, Bishop of San Pedro Sula (one of the most-affected areas in the country). Emiliani has worked with gang members for years and conducted dialogue with the gangs’ leaders in 2003 and again in 2009 (in this case, the dialogue process ended after the police killed a gang member).

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(10) Phone interview with Adam Blackwell, Secretary of Multidimensional Security, OAS, 7 August 2015.



In 2012, news about the truce in El Salvador spread through Central America and, in July, the gangs in Guatemala and Honduras were considering the opportunity of engaging in similar processes. The Salvadoran mediator Raul Mijango admitted secret conversations with Honduran officials and, separately, with gang leaders in Guatemala. Reportedly, in both cases he urged them to find local facilitators trusted by groups and the government (Rueda, 2012). Also that summer, Honduran public officers including the Minister of Security and the Police Director met with colleagues in El Salvador to discuss different issues, including details of the truce.

In May 2013, the Honduran gangs delivered their first public statements from the jail of San Pedro Sula. Barrio 18 committed to stopping deadly violence in exchange for the government to “*stop killing us, listen, and create jobs and employment*”. The MS-13 announced a ban to homicides with immediate effect in the national territory, as a first step toward further developments.

This initial commitment had been mediated for eight months by Bishop Emiliani, who also gained support from the OAS. Both Emiliani and the Secretary of Multidimensional Security of the OAS, Adam Blackwell, were present during the announcements. The mediator, Emiliani, considered this the first step in a long negotiation ahead between the gangs to reach wider agreements (Pachico, 2013). The authorities responded promptly and President Porfirio Lobo announced he was ready to support the mediators in all their needs. In July, the Salvadoran mediators met Honduran gang leaders in jail to convey their experiences and bring help.

#### *A process that never advanced*

The Honduran gangs did not deliver a unified statement but separate announcements, a point that raises questions about the existence of a real truce between them. The commitments and demands expressed in their communiqués were abstract and not straightforward, and would require long-term responses and processes. Despite the government’s vocal commitment to the process, the leaders of the gangs were not transferred to standard prisons. The reduction of violence was limited, an outcome that corresponds with assessments about the share of responsibilities.

The Honduran gangs have a more decentralized structure and a leadership less able to enforce strict command and control over the street groups and *clicas* (it is unclear to what extent imprisoned leaders are the “real” leaders in the streets). Related to this, the MS-13 -the stronger gang in El Salvador- is unified and has leadership, command and control structures, discipline and ability to enforce orders. Meanwhile Barrio 18, the stronger and dominant gang in Honduras, is divided into two factions and their structures are more decentralized and fractured.

Dudley (2013) further summarized differences between the Honduran and Salvadoran gangs. In El Salvador, there have been informal conversations and dialogue with the gangs at least for a decade, with involvement from governments, NGO, and different churches. The leadership of the gangs has had the opportunity to be in contact with diverse social groups and visions, probably gaining political maturity and an understanding of the prospects and limits of dialogue (hence the focus on violence reduction in exchange for non-maximalist demands). In addition to this, they have political experience: some of the leaders are former guerrilla members while others have held regional leadership positions in their organizations for years (as the “headquarters” of MS-13 and Barrio 18 are placed here). The situation in Honduras is notably different; dialogue has existed but has been less frequent, and participation in drug trafficking has distorted the original objectives and structure of incentives of the groups.

Another key difference is the legitimacy of the government. In spite of problems, the authorities of El Salvador used a combination of suppression plus incentives and gained notable international

support. A legitimate government was able to delegate in national and international mediators. In Honduras, the institutional crisis that erupted with the *coup d'état* of 2009 left a government with weak legitimacy and leadership, hampering dialogue with the international community to get funding, as well as efforts to engage the public opinion on this controversial issue. Violence and corruption had soared after the coup, reportedly as a result of a new focus on the suppression of dissent and control of the population, instead of dealing with criminal issues. The US withheld its support (including from the Drug Enforcement Agency, DEA), and criminal organizations took advantage of the political instability that ensued.

The only element in which Honduras may have had an advantage is in the mediator involved. Bishop Emiliani is the chief Catholic figure and the whole structure of the Catholic Church supported his involvement without divisions. He had experience in dialogue with the gangs, an invaluable knowledge of their structures and enjoyed their trust. His participation in this issue dates back years, with efforts to facilitate agreements at local levels, work in prisons, and promotion of initiatives for the reintegration of gang members. The support of the OAS was also notable in this case.

### *Analysis*

The process in Honduras never went beyond the initial announcement and lacked short-term results. Decentralized gangs and a weaker leadership were able to get only minimal reductions of violence, in a context characterized by the presence of other violent actors. Their petitions were abstract and long-term, and a government with weak legitimacy expressed support but was not able to deliver.

The announcement of the truce through separate statements indicates that conditions were not ripe for a real ceasefire, and points to some precipitation in making public a process that was not mature. There seems to be a contradiction between conversations held in secret for months and an improvised communication strategy, pointing again to the need for a careful balance between confidentiality and transparency.

The process had the enormous advantage of a committed mediator. Emiliani has a long experience of working with gangs and enjoyed the trust of their leadership and communities. He was able to manage the process based on the understanding of the social and economic dimensions of the gang phenomenon. However, some sources point out that his relationship with Barrio 18 is better than with MS-13, something that undermined his perception as a neutral and impartial actor. The support of the OAS could not improve a process that was announced in the absence of the necessary conditions for success, including a government with the desire and capacity to commit support and promote advancements.



### **The role of the OAS in El Salvador and Honduras**

The OAS participated actively in both processes through the Secretariat of Multidimensional Security, with a prominent role of Ambassador Adam Blackwell, who has been a public advocate of overall change in security policies in Latin America. Participation was framed in the concept of “smart security”, a component of which is a comprehensive knowledge of the security systems of member states. The organization has carried out “full and quite invasive”<sup>11</sup> security diagnostics of the security sectors in El Salvador, Honduras, Belize and Costa Rica, always by invitation. The results are confidential. But both in El Salvador and Honduras, this diagnostic preceded involvement in the truce processes.

To articulate participation, this Secretariat created a Mission of Support for Central American Security (MAS Central America), one of the few programs of the organization with a regional focus, and closely aligned with the priorities of SICA. In Honduras, the delivery of the report was followed by the creation of a coordination body to implement the recommendations: the Commission to Reform Public Security, with three Honduran officials, Secretary Blackwell, and a Chilean official. Both in Honduras and in El Salvador, the reports confidentially discussed with public authorities were the basis for building trust and further involvement in mediation with the gangs<sup>12</sup>.

### **4.3 Colombia: Reintegrating a hybrid group (AUC) with a focus on Medellín**

The paramilitaries are one of the multiple layers of violence in Colombia. Those who merged under the umbrella of the United Self-Defences of Colombia (AUC) in the mid-1990s were composed by at least three main groups: former cartel security services, small and medium-size drug lords, and landowner elites. Receiving support (by commission or omission) from sectors of the political establishment and the armed forces, by 2000 they were professionalized and able to effectively fight the FARC. With huge profits from the drug trade, they were able to exert territorial and social control in large areas.

In October 2001, the AUC were included in the US list of Foreign Terrorist Organizations (FTO). Debates grew within the group about their political status and role in narco-trafficking, in the context of an upcoming presidential election. Soon after Alvaro Uribe took office in August 2002, they sought the support of the Catholic Church and the Commission for Peace Facilitation in Antioquia and declared themselves ready to start negotiations for demobilization.

A new law empowered the President to start peace negotiations with armed groups irrespective of their political status. The government created a six-member Exploratory Commission that -together with the High Commissioner for Peace and representatives of the Catholic Church- started negotiations with the AUC. In July 2003, they signed the agreement of Santa Fe de Ralito, which included commitments to stop violence, join a process of disarmament and demobilization and abandon illicit activities.

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(11) Phone interview with Adam Blackwell, August 7, 2015; Idem, August 18, 2015.

(12) For a more detailed explanation, see the speeches and interventions by Secretary Blackwell, available at: [http://www.oas.org/es/ssm/sms\\_perfil\\_discursos.asp](http://www.oas.org/es/ssm/sms_perfil_discursos.asp)

The process was a collective surrender in exchange for favorable judicial treatment. The Colombian government approached the AUC as if they were a political group and left aside their criminal activities except for the condition to repair victims with their illegally acquired assets. This approach was possible because Colombia has an armed conflict, irrespective of the real nature of (at least part of) the group. Beyond their origins and extensive involvement in narco-trafficking, their criminal interests became evident during the process. Narco-traffickers “bought” a place in the paramilitary franchise as supposed regional commanders to consolidate their illicit enrichment and avoid extradition. Thus alleged leaders of the AUC were merely traffickers.

The impacts would be felt in the future, as these processes allowed a “legalization” of some illegal structures. As a result, some leaders were able to hold a double condition of “demobilized” combatants obtaining judicial benefits for past crimes, and heads of criminal organizations in full operation (Gil Ramírez, 2013). The economic, social and political components of the paramilitary phenomenon were never dismantled while the devolution of illegal assets has been minimal up to now<sup>13</sup>.

An agreement with the OAS in January 2004 put this multilateral organization in charge of verification through a Mission in Support of the Peace Process in Colombia (MAPP-OEA). It was the first international organization invited to verify a peace process in this country (Duarte Villa & Trindade Viana, 2012). The objectives were providing verification and advisory support during the process of demobilization and reintegration, and supporting peace efforts by Colombian institutions and communities. The role of the OAS was initially limited and problematic. But with a strengthened mandate, they were among the first in expressing concern about problems in the demobilization (Arnson et. al., 2007), such as the fact that part of the military structures reorganized and remained active as “criminal bands” (ICG, 2007).

### *The case of Medellín*

The contradictions were acutely felt in Medellín. This city, which gained prominence in the 1980s during the height of the Medellín Cartel, has been for decades the scenario of struggles between violent actors including criminals and groups associated with insurgencies and paramilitaries. Different processes of demobilization, reinsertion and peace initiatives at the national level have impacted the local situation while the council has promoted autonomous policies for citizen security (Llorente & Guarín León, 2013; Giraldo-Ramírez & Preciado-Restrepo, 2015).

The Envigado Office, led by Diego Murillo “Don Berna” and linked to paramilitary interests, inherited the control of narco-trafficking and criminal activity after the demise of the Medellín Cartel and consolidated hegemony in the 1990s. When the AUC became the national paramilitary umbrella, the Envigado Office implemented the strategic direction and gained hegemony through the co-option or elimination of other criminal groups. The move was complemented in 2001 with the creation of the Cacique Nutibara Bloc. By 2003, the Envigado Office had both a “paramilitary” soul and a criminal hegemony in the city and surrounding rural areas.

The Cacique Nutibara was the first AUC bloc to undertake demobilization, including members of groups and gangs under control of the Envigado Office that were formally “demobilized” in symbolic and public ceremonies. From then on, the Envigado Office enjoyed the double condition of a demobilized group and the hegemon of Medellín illegal structures<sup>14</sup>.

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(13) Phone interview with Adam Isacson, Washington Office on Latin America (WOLA), August 24, 2015.

Colombians call the period that ensued *donbernabilidad*, referring to the hegemony of Don Berna and Envigado over the criminal world. According to Insight Crime, Don Berna managed operations from jail and collaborated with the justice system, including the keeping of murder rates at a low level. Between 2004 and 2008, the murder rates dropped to 30 per 100,000 during the first three years and 50 afterward, the lowest in thirty years. A new Municipal Council took advantage of the opportunity to implement programs of social outreach and violence prevention. But in 2008, the government approved the extradition of fourteen paramilitary commanders (including Don Berna) to the US. In Medellin, a war erupted between two factions for the leadership of Envigado, provoking an immediate rise in homicides and forced displacement that lasted until 2010.

In 2010, a Commission of the Wise (*Comisión de Notables*) mediated a truce between the two factions. It was composed by the Archbishop of Medellin Alberto Giraldo, the delegate for Antioquia of the National Commission on Reparation and Reconciliation Jaime Jaramillo, the ex-member of the ELN and peace advisor Francisco Galán, and the former Director of the Programme for Peace and Reconciliation of the Council of Medellin, Jorge Gaviria. They had experience in negotiations with paramilitary and insurgent groups and confirmed the start of the truce in February 2010, after three months of mediated dialogue with and between middle-level ranks imprisoned in different jails.

The mediators presented themselves as an initiative of civil society without the involvement of the national or municipal governments (Cárdenas, 2010). Concessions in exchange for the truce were never officially admitted, but members from different factions were moved to the same jail to facilitate dialogue and control over street groups. Some sources report that the initiative was sanctioned by the national Office of the High Commissioner for Peace, Frank Pearl, and included penalty reductions for those in prison or surrendering to justice, and access to municipal programs for young gang members (El Espectador, 2010). The truce, however, lasted only a few months.

### *Analysis*

The existence of an armed conflict allowed the government of Colombia to approach the AUC as a political actor and sideline two elements: the support and complicity of political and economic sectors, as well as part of the armed forces, and their hybrid nature and criminal agenda that was evident during demobilization. As a result, mediation and negotiations derived in a collective surrender that failed to address their criminal activities, force the devolution of assets to provide reparations to victims, and dismantle their connections with legal actors and support structures. Most of them were allowed to retain their illegally obtained properties and fortunes. The agreement was convenient for the government as a first step to concentrate forces on fighting the FARC.

The shortcomings were especially evident in Medellin. The intimate connections between the Envigado Office and the AUC were not addressed and as a result, this organization was able to hold a double role of “demobilized” and manager of the criminal world. The result was a kind of co-government, in which criminal organizations were able to act as interlocutors and intermediaries between people and authorities.

In the following truce, the Commission of the Wise presented themselves as representatives

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(14) Later on, after his extradition Don Berna explained the dynamics from a US jail (Laverde Palma, 2013). A former commander of the AUC declared to a Justice and Peace Court that the demobilization of Cacique Nutibara was designed to give political benefits to the bosses of the Envigado Office in order to reduce the levels of violence.

of civil society, but broad sectors were never included. Negotiations were secret and the actual levels of knowledge and support by municipal, state and national authorities were never made clear. Some civil society organizations in Medellín point to the illegality of the agreements but take a pragmatic view: if they exist, there is a possibility to use them to protect civilians, humanize the conflict and promote respect for human rights and IHL. But in absence of a structured mediation process, no initiative was taken to move beyond the reduction of violence towards other issues or to involve civil society.

In both cases, the outcome can be defined as a “*pax mafiosa*”, as mediation ended up reducing violence at the price of empowering criminal organizations (Gil Ramírez, 2013) and the consolidation of their illegal assets. Despite the concerns raised by the Colombian civil society and later by the MAPP-OAS, they had no actual power to influence the process.

#### **4.4 Mexico: From drug-trafficking violence to the emergence of vigilantes**

The Mexican drug trafficking landscape has evolved as a result of market dynamics, Law enforcement, and political change. Two factors had a great impact in the 1990s. The demise of the Colombian cartels and the closing up of the Caribbean routes forced a restructuration of the international cocaine trade and generated opportunities for the Mexican cartels. Land routes and the Pacific Coast became strategic on the road to the US (González Bustelo, 2014). The political transition and evolution into a multi-party system eroded the permissive and even protective relations formerly kept by the narcotics business with the centralized PRI Administration (Serrano, 2007; Astorga & Shirk, 2010).

Violence soared since President Felipe Calderón launched a large-scale war on drugs after his election in 2006. The Army and the Federal Police were deployed to confront cartels and arrest leaders, triggering internal and external competitions for power and growing market instability, with parallel processes of fragmentation and territorial expansion under the pressure of the war on drugs. The result has been wars within the groups, among them, and against the state (González Bustelo, 2014). There were six major cartels in 2006, around 15 identifiable “brands” in 2013 and dozens today (Dudley, 2013). More than 60,000 people died, and 25,000 disappeared as a result of violence during Calderón’s administration. Governmental sources estimate the total number of victims 2007-2014 in 164,000 (INEGI, 2015).

The state of Michoacán is a strategic drug corridor and cartels have struggled for this territory for years: first, the Milenio cartel against the Zetas; later, the Zetas against La Familia Michoacana (LFM). In 2011, the demise of the LFM was followed by the emergence of the Knights Templar and in 2012 a new group (the Cartel of Jalisco – New Generation CJNG) violently challenged their hegemony. Armed competition impacted the local population who became victims of violence, predation, and extortion.

Self-defence forces emerged in 2013 in Michoacan and spread to around 30 Mexican states. Citizens organized armed groups as a reaction to violence and crime, corruption and institutional deficits and to restore public security. These groups have not embraced political ideologies and claim to fight in defense of their communities, although there are differences among them in terms of their legitimacy and grassroots support (Heinle et. al., 2015).

*Reintegration through recognition and co-option*



The Mexican authorities have used different strategies to deal with self-defence forces (Althaus & Dudley, 2014). After calling them criminals and ignoring them for most of 2013, the vigilantes seized several towns and villages at the beginning of 2014 in Michoacán. The government reacted by sending federal forces to force a disarmament that was refused.

The Mexican President Enrique Peña Nieto appointed a former State Attorney, Alfredo Castillo as his special envoy (Security Commissioner) for Michoacán. Castillo took control of Law enforcement agencies and the justice system, and at the end of January 2014 negotiated an agreement with the militias: legalization in exchange for cooperation with federal authorities. This *de facto* recognition of illegal forces included a requirement for the groups to register members in governmental bodies and a plan for their integration into local armed forces. The Commissioner also announced the creation of a Rural Defence Corps to integrate the militias, who would receive arms and uniforms. In operational terms, the eight-point agreement envisioned a division of responsibilities between the militias and official forces; areas of deployment; coordination meetings with Castillo every ten days, and funding for social and economic investment in the region, among others.

The deadline for entry into force of these provisions was May 2013, when militias were expected to disarm or join the Rural Defence Corps. However, it soon became apparent that disarmament was far from complete and that there were internal divisions in the self-defence forces. Over 3,000 of an estimated 20,000 effectives applied to join the force (not all of them were successful). Other groups rejected the government's appeal for cooperation.

Actual cooperation between federal forces and militias included the joint seizing of territories and villages, joint checkpoints, and intelligence cooperation about the Knights Templar. Arrests of operatives increased to the point that the group was eventually defeated (Reed, 2014). But the killing and capture of top commanders and operators of this organization proved divisive for the agreement itself. As the government felt more in control and without the need of external cooperation, they started targeting the leadership of the militias and jailed some of their principal leaders. This move caused a drift within the militias' movement and with the federal authorities. As Althaus & Dudley described it: "*Michoacán has since devolved into a low-intensity forefront battle: militias fighting militias; militias fighting DTOs; militias fighting the federal security forces; federal security forces versus DTOs*" (2014, 14).

Apart from changing tactics, the governmental plan never included procedures and calendars for the demobilization of those groups refusing to take part in the initial agreement. Further, no steps were taken to make the militias more accountable to the communities they claim to defend (Santamaría, 2014). The main characteristics of the self-defence forces add a problematic dimension to any engagement attempt. They are a decentralized network composed of very diverse groups, with no centralized command and control and poor discipline, and there is no transparency about their recruitment, funding, and weapons. Some analysts have even suggested that some groups might be more interested in narco-trafficking than in citizen security.

### *Analysis*

The initiative to reintegrate the self-defence forces in Michoacán has been hampered by different problems related to the context, process and actors involved. The growth of citizen militias was, at least at the beginning, a grass-roots response to insecurity and lack of access to justice. By their very nature, they don't form a cohesive structure but rather a decentralized collection of autonomous groups with no central command or overall discipline. Any mediation attempt is hampered by the lack of a defined interlocutor able to generate and maintain internal support and

enforce decisions.

On the other side, the Mexican government's approach to the problem lacked a coherent strategy. They successively ignored the groups, tried to co-opt part of them to work jointly with the security forces, and attempted to dismantle their structures after the Knights Templar had been defeated. The process itself was a narrow attempt to integrate some groups with no further plans to deal with groups reluctant to integrate.

The appointment of the Security Commissioner was a step in the right direction, as he had the authority to negotiate a deal with the militias. However, he might have been perceived as too close to the government to gain their trust, causing problems in the process of integration into official forces. It is not clear to what extent he had autonomy and was responsible for (or even aware of) successive steps including the jailing of self-defence leaders.

## 5. Conclusions

Outreach strategies and mediation with non-state criminal actors take place more commonly than assumed in Latin American countries, often with support from the state authorities. In most cases, the aim is a reduction of violence, although on occasions (especially in El Salvador) the process lasts long enough to deliver results and open the door for further developments.

Most of the processes analyzed in this paper have been conducted by insider mediators and not by foreign diplomats or professionals of mediation. Those insiders respond to the features described by the UN and others: individuals who are not neutral but fair to the parties. They have a profound knowledge of the local context and are critical to identify entry points and facilitate the creation of spaces for dialogue, as shown in the cases of Honduras and El Salvador where their role was vital in the exploratory and initial phases to build the process.

The Catholic Church has played an important role, sometimes represented by individuals working alone or in small teams (Honduras, El Salvador) and sometimes as part of wider delegations (Colombia). In other cases, figures with political experience and/or governmental support have played important roles (the Commission of the Wise in Medellin and the Security Commissioner in Mexico). The inability of the Mexican commissioner to gain the trust of the parties may be, at least in part, attributable to the absence of a coherent strategy.

The resource to third parties by governments is appropriate and understandable given the need of plausible deniability, particularly in the first stages of a process. In some countries (notably in El Salvador and Honduras with the anti-gang legislation), it is illegal for the government to engage these groups. This provides an advantage for non-official actors. On the other side, those mediators face legal uncertainty and are vulnerable to law enforcement and even prosecution in the event of changes in the political situation or in the position of the government.

The role of the OAS cannot be overlooked. In Colombia, the mission was established with a limited mandate primarily defined by the government, reducing the ability of the organization to denounce non-compliance and influence the evolution of the process. Only with time the MAPP-OEA was able to play a more assertive role. But this regional institution was critical in providing support to the truces in El Salvador and Honduras, as it contributed to raise legitimacy and reduce the concerns of the governments, generate trust among the gang leadership and gather international



support. This involvement, which departs from its traditional missions, illustrates the importance of personal leadership when it comes to pushing a bureaucracy toward innovative strategies. The experience situates the OAS at a prominent level among multilateral institutions regarding involvement in non-conventional violence with a conflict resolution approach.

The creation of the Committee for Technical Coordination of the Process of Violence Reduction in El Salvador, composed of the government and the OAS, facilitated international engagement, not least because the government transitioned from a tacit to an explicit support. The step facilitated the open involvement of the EU, including funding the NGO Interpeace to provide technical support to mediation. These combined efforts added to the strategies and programs already carried out by the UNDP and other international agencies and facilitated the transition to the second phase of pacification.

All the cases analyzed show that international support heavily depends on the position of the national government. In Mexico, a government lacking a coherent strategy did not call for international support. In Central America, the involvement of international actors fluctuated and changed, as they adapted their strategies to follow governmental positions.

Social polarization about crime and the use of this issue as a tool of electoral politics has profound consequences on the possibility to use mediation and conflict resolution approaches for violence reduction. Governments fear the reaction of the public opinion and negative coverage by the media, as well as the price payed in electoral results. As a result, their involvement and support are discontinuous and volatile and their public positions contradictory. In all the cases analyzed, this ambivalence has prevented the design and implementation of communication strategies.

In El Salvador, the lack of transparency about the origins of the truce and the inconsistency of public messages undermined the credibility of the process while, in Honduras, precipitation in making the process public might have threatened continuity in an unstable environment. This is problematic as the international experience in mediation show that those strategies need to be well-thought in advance, and able to balance the competing needs of discretion, transparency and accountability.

Amidst a veil of secrecy (Colombia, Mexico), sensationalistic media coverage (El Salvador, Honduras) and continuously changing governments' positions, civil society has had limited opportunities to make their voices heard.

The experiences of Latin America suggest that mediation with criminal groups needs firm political support, transparency and realistic goals, as well as clarity about the limits of dialogue at each stage. The vulnerability of insider mediators could be reduced through targeted international support in training, funding or recognition.

At the international level, mediation benefits from the role of NGO and private organizations, who have knowledge and accumulated experience in Track II processes. The advantages of non-governmental actors in terms of early engagement, exploratory initiatives, and humanitarian dialogue suggest that there is a space for them in Latin American contexts, particularly in situations where the political constraints prevent involvement of state-related national or international actors. Apart from direct involvement, their support and training for insider mediators could be invaluable.

Similarly, the experience of development and humanitarian organizations can be valuable as they have a profound knowledge of how criminal violence affects communities and of the coping strategies developed as a response. Their reputation, and knowledge of mechanisms to strengthen

the protection of civilians in conflict settings, could provide insights into applying a humanitarian approach to criminal violence in Latin America. Beyond the essential work of providing basic services and protection to vulnerable populations, there is room for a wider approach that may include contacts with criminal groups, awareness raising about the humanitarian impacts of violence and the need for holistic responses, and the strengthening of legal mechanisms to deal with the results of violence.

Outreach to criminal groups demands an understanding of two complementary aspects. The first is the criminal economy that sustains them, the reasons for involvement and the challenges for the integration of these actors into the licit economy. This is even more vital given the current trends of criminal violence in this region: rapid transformation and leadership change combined with the endurance of the criminal economy. Second and related are their sources of legitimacy and the often-ambivalent relations with the communities, which oscillate between conformity and resistance, co-option and coercion. Illegal economies are not only related to organized crime but to the livelihoods of large segments of populations that lack alternative options. In other words, processes of mediation need to pay attention to the political economy of violence.

Future processes would greatly benefit from a systematized approach to document the knowledge about actors, processes and practices, as well as lessons learned. Research, diffusion and sharing of the Latin American experiences in mediation with criminal groups could contribute to de-stigmatizing the issue and normalizing engagement. The role of civil society and academic institutions in this regard cannot be over-emphasized.

The fact that criminal violence in Latin America has tended to remain outside the ‘radar’ of peace and conflict studies has also prevented learning the lessons of engaging criminal groups in conflict settings. An increasing international recognition of their role in violence and peace has run in parallel to a body of research and some innovative experiences on the ground, such as including criminal actors in peace processes (Mali) or subordinating the elimination of a criminal economy to other considerations (in Afghanistan, counter-drug efforts became secondary to the political imperative of building local support to the state).

Mediation with criminal groups remains a contested issue, and the Latin American experiences are no exception to this rule. Polarization and divergent perspectives about the desirability of dialogue are the norm and building common ground is a daunting challenge. At the same time, the anti-crime approaches that have predominated in the last two decades have shown limitations and setbacks. The challenge of exploring alternative methods and how they can be used in combination with (and as a way to strengthen) justice and the law is not only necessary but urgent.

## 6. Questions for further research

- What are the limits of what can be offered to criminal actors in a mediation process? How to avoid a *pax mafiosa*? How can mediation address the links between crime, business, and politics?
- Is it possible to mediate violence in the context of the “war on drugs”?
- What can be done to enhance the legitimacy of mediation with stigmatized criminal actors? What communication strategies are most appropriate? How to reconcile discretion with transparency?
- How can insider mediators be supported? Can official or non-official actors provide training and expertise? What could be the role of international private organizations in processes of

mediation with non-conventional actors?

- Can regional organizations (OAS, UNASUR) work together and with the UN to adapt the toolkit designed for conventional state conflict to one that can deal with the new reality of non-state actors and unconventional conflicts? How to involve official donors in this effort?

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