

Humanitarian Diplomacy for Protecting Vulnerable Persons and Humanitarian Aid Workers in Civil Strife and Non-International Armed Conflict in Mexico and Central America's Northern Triangle

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Humanitarian Diplomacy for Protecting Vulnerable Persons and Humanitarian Aid Workers in Civil Strife and Non-International Armed Conflict in Mexico and Central America's Northern Triangle

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Table Of Contents

1. Summary	3
2. Introduction: The broken equilibrium – Situation, Threat in Mexico and Northern Triangle of Central America	4
3. Attacks on Civilians, Displaced Persons, Health Care Workers and Humanitarian Actors	6
4. Engaging and Negotiating with Non-State Armed Groups (NSAGS): Methodology and Literature Review	13
5. Criminal Armed Groups (CAGS), Civil Strife, Criminal Insurgency, Crime Wars and Non-International Armed Conflicts (NIACS)	16
6. Restoring Equilibrium: Humanitarian Access and Negotiations	20
7. Conclusion: Prospects and Barriers to Humanitarian Engagement with NSAGS and CAGS	23
8. Bibliography	24

SUMMARY

1

This working paper assesses the potential for employing humanitarian diplomacy to mitigate the humanitarian crisis stemming from conflicts between criminal cartels, gangs, and the state in Mexico and Central America's Northern Triangle. It will assess opportunities for humanitarian diplomacy to enable humanitarian access to protect refugees, the in situ civilian populace, and humanitarian aid workers from violent attacks from a range of Non-State Armed Groups (NSAGs), especially, cartels and gangs, by negotiating with and engaging criminal armed groups (CAGs). The research employs assessment of secondary sources (literature review) and select interviews.

Transnational organized crime is challenging the ability of states to effectively govern in the face of extreme criminal violence and insecurity. The situation is especially acute in Mexico and the Northern Triangle of Central America (NTCA). The extreme violence challenges the legitimacy and capacity (together the 'solvency') of states. The result of the onslaught of criminal violence is endemic instability where the equilibrium between the state and organized crime (criminal cartels and gangs) is broken.

The non-conventional violence in Mexico and the NTCA demands innovative approaches to ensure humanitarian access, civil protection, and community resilience. Many analysts suggest an integrated humanitarian and development approach. (Stein and Watch, 2017) These combined approaches potentially benefit from engaging NSAGs to enhance humanitarian access and protection. While such engagement is controversial, it promises to yield improvements in security if carefully embraced.

INTRODUCTION: THE BROKEN EQUILIBRIUM – SITUATION, THREAT IN MEXICO AND NORTHERN TRIANGLE OF CENTRAL AMERICA

2

Transnational organized crime is challenging the ability of states to effectively govern in the face of extreme criminal violence and insecurity. The situation is especially acute in Mexico and the Northern Triangle of Central America (NTCA). The extreme violence challenges the legitimacy and capacity (together the 'solvency') of states. The result of the onslaught of criminal violence is endemic instability where the equilibrium between the state and organized crime (criminal cartels and gangs) is broken. As a result:

Mexico is currently embroiled in a protracted drug war. Mexican drug cartels and allied gangs (actually poly-crime organizations) are currently challenging states and sub-state polities (in Mexico, Guatemala, El Salvador and beyond) to capitalize on lucrative illicit global economic markets. As a consequence of the exploitation of these global economic flows, the cartels are waging war on each other and state institutions to gain control of the illicit economy. Essentially, they are waging a 'criminal insurgency' against the current configuration of states. (Sullivan, 2012)

The cumulative result of these 'criminal insurgencies' is extreme insecurity, state fragility, and extreme violence where the populace is at risk of violent attack from both criminal bands and state reaction. Lawless zones or 'criminal enclaves' result in parallel governance. Instrumental violence, corruption, and cartel information

The gangs and cartels gain 'political' attributes (intended or accidental) as they participate in the power-counter power contest with the state.

operations (including the deployment of social media, banners known as *narcomantas*, and symbolic killings of journalists, mayors, judges, and police) solidify criminal governance and territorial control by gangs and cartels.

The result is a patchwork of 'criminal enclaves' where the state and criminal organizations vie for control. The cartels use street taxation, through extortion and protection rackets, to solidify their territorial dominance. The absence of effective state control and weak governance leave the populace at risk. These enclaves are sometimes targeted, often exploited, and at times protected by the criminal bands that frequently employ the mantle of 'social banditry' to influence the population. (Sullivan, 2012)

The gangs and cartels gain 'political' attributes (intended or accidental) as they participate in the power-counter power contest with the state. This 'political' dimension involves territorial control, corrupt linkages with state officials, the provision of utilitarian social goods, and a de facto establishment of a criminal monopoly of violence in contested areas. In short, the cartels and affiliated gangs fight (effectively waging non-state war) against their rivals: the state and other criminal enterprises. They do so to gain and retain freedom of movement and avoid state interference with their economic pursuits and raw power. The populace falls victim to this brutal contest.

ATTACKS ON CIVILIANS, DISPLACED PERSONS, HEALTH CARE WORKERS AND HUMANITARIAN ACTORS

3

The violent toll of this contest for criminal economic domination and power is profound. The death toll is staggering with many cities of Mexico and the NCTA placing among the most violent in the world. The death toll in Mexico is pegged at over 150,000 persons killed since the start of the drug war in 2006;¹ “In 2018, the number of drug-related homicides in Mexico rose to 33,341, a 15 percent increase from the previous year—and a record high. Moreover, Mexican cartels killed at least 130 candidates and politicians in the lead-up to Mexico’s 2018 presidential elections.” (CFR, 2019) Latin America’s homicide rate at roughly 21.5 per 100,000 is greater than three times the global average; El Salvador’s homicide rate was 60 per 100,000 in 2017, while Honduras has a rate of 42.8 per 100,000, and Guatemala 26.1 per 100,000. Mexico’s corresponding rate was 20.4 per 100,000. The most violent

¹. The 150,000 death toll is a conservative estimate. Others place the toll much higher, for example a recent Wall Street Journal report pegged it at 250,000 dead with a further 37,500 missing (de Córdoba and Montes, 2018). A good review of the state of violence in Mexico is found in the April 2019, Justice in Mexico report from the University of San Diego (Calderón L, Heinle K, Rodríguez O & Shirk D, 2019).

cities in the region (in 2016) with the top three homicide rates were San Salvador, El Salvador with 136.7 per 100,000, Acapulco, Mexico with 108.1 per 100,000, and San Pedro Sula, Honduras at 104.3 per 100,000. (Muggah and Aguirre, 2018)

The Justice in Mexico project assessed that:

“Record violence in Mexico has disproportionately affected certain populations (e.g. politicians, journalists, and men). In 2018, a major election year, there were 37 victims among mayors, mayoral candidates, and former mayors. These numbers are up slightly from 35 cases in 2017 but demonstrate a significant increase from 14 victims in 2015 and 6 victims in 2016. A 2018 Justice in Mexico study found that in recent years Mexican journalists were at least three times more likely to be murdered than the general population, while mayors were at least nine times more likely. There were 16 journalists and media workers killed in 2018.”

In addition to murders, disappeared persons or *desaparecidos* are a major concern with at least 37,000 currently missing in Mexico alone. (Wilkenson, 2019). Mexico and the NCTA are also challenged by social cleansing committed by gangs and cartels that target civilians leading to displacement (both refugees and internally displaced persons). The Internal Displacement Monitoring Centre counts 338,000 conflict-related IDPs in Mexico

since 2009.² (Internal Displacement Monitoring Centre, 2019) In the NCTA refugees flee economic hardship, climate stress and endemic gang violence to seek refuge and safety in Mexico and the United States. Extreme homicide rates driven by the criminal eco-system dominated by maras and gangs (*pandillas*) like Mara Salvatrucha and 18th Street, combined with extreme corruption and impunity, fuel the exodus. (Cheatham, 2019) The situation is essentially a humanitarian crisis. (Cantor and Plewa, 2017)

According to *Médecins Sans Frontières*, Mexico: “Every year, an estimated 500,000 people flee violence and poverty in El Salvador, Honduras and Guatemala and enter Mexico with the hope of reaching the United States.” (MSF, Mexico, 2019) MSF is currently providing medical care to migrants and refugees stranded along the US-Mexico border. (MSF, Mexico, 2019) This frontier is highly contested by criminal cartels (narcos/drug traffickers, human traffickers, and smugglers) and asylum restrictions imposed by the current US administration have created a humanitarian crisis at the frontier.

². See Internal Displacement Monitoring Centre (2015), *New Humanitarian Frontiers: Addressing Criminal Violence in Mexico and Central America* for additional context.

Persons fleeing intense criminal violence in the Northern Triangle are now subject to victimization as they seek refuge. The refugees, including women and children, are subject to criminal victimization including assaults, rape, and femicide/murder. Health care providers (physicians, paramedics, EMS personnel, Mexican Red Cross workers) and ambulances, hospitals, and humanitarian workers are also targeted in the criminal cartels' extreme violence including beheadings and dismemberments. Police, mayors and other politicians, and journalists are routinely targeted in this violence.

In Guerrero, MSF provides medical relief to eleven communities plagued by cartel violence. Cartel *halcones* (lookouts) and *sicarios* (hitmen) interrupt the provision of basic medical care requiring humanitarian intervention. (MSF, 2019)

Healthcare workers are also targeted by this violence. This threat is potentially aggravated by health emergencies such as the COVID-19 pandemic. In Mexico, Red Cross workers from the *Cruz Roja Mexicana* have been attacked and now accept armed escorts to provide assistance after initially suspending operations after

an armed group attacked an ambulance, executed the patient and attacked two paramedics in Guanajuato state in April 2019. In February 2019, a *Cruz Roja Mexicana* coordinator was murdered in Zihuatanejo, Guerrero when an armed assailant shot him in the head in his office and in November 2018, a Red Cross paramedic was killed and four to six others injured when an armed group opened fire on volunteers distributing humanitarian aid. (Clancy, 2019; IFRC, 2018)³

Doctors and nurses have been sporadic yet persistent targets of cartel violence. As early as 2012, nurses in Ciudad Juárez were targeted by cartel gunmen. (Cronin, 2013) Cartel gunmen in Tamaulipas kidnapped and murdered a physician, Érika Sánchez Marroquín, for treating a member of a rival gang in 2013. In addition, physicians in Nuevo León, Tamaulipas, and Coahuila have made anonymous reports that they are occasionally kidnapped by cartel commandos and forced to treat their members wounded in cartel battles. (Proceso, 2013)

In Ciudad Juárez, attacks on medical personnel have included attacks on patients in hospital emergency

2. The International Federation of Red Cross and Red Crescent Societies (IFRC) strongly condemned the 18 November 2018 attack that killed one volunteer and injured six others. The incident occurred in San Juan Tenería, in the municipality of Taxco when the humanitarian relief distribution site came under armed attack. IFRC President Francesco Rocca said: "National Red Cross and Red Crescent Societies are neutral and impartial organizations. Their only focus is on serving the most vulnerable. Humanitarian volunteers and staff are not a target." (IFRC, 2018)

departments, attacks on ambulances, including medics and their patients, and a 2010 car bomb attack by an enforcement gang known as *La Línea* that left a doctor, a paramedic, and two police officers dead. (Kolb, 2014; Sullivan, 2010) According to the ICRC:

“In 2018, the high levels of violence in Mexico continued to cause suffering and had serious humanitarian consequences. The violence resulted in people being killed (34,202 in 2018, i.e. 23.10 for every 100,000 people), wounded, missing, displaced and leaving the country. The violence also hindered the delivery of basic education and health-care services.” (ICRC, 2019)

In El Salvador, a similar situation is observed. Gang violence and crime are an impediment to humanitarian access and the provision of adequate health care. According to the ICRC:

“Health workers deemed outsiders are often prevented from getting to communities living under the territorial control of criminal groups, a so-called invisible barrier thrown up around them that clearly undermines the idea that health services should be universal and accessible to all. (ICRC, 2017)”

Health care workers are also targeted in El Salvador. In one case:

“In April 2016, a 14-year-old boy was killed while attending a first-aid training session in La Libertad. He was a volunteer for Comandos de Salvamento. Unknown men burst into the building brandishing high-calibre weapons and, without saying a word, shot the boy. – Incident reported to the local media by a member of the Comandos de Salvamento, a local emergency service organization (ICRC, 2017)”.

In one extreme case a sustained cartel battle left Tijuana, Mexico, hospitals at risk as cartel *sicarios* engaged in simultaneous pre-dawn gun battles. As emergency physicians treated drug traffickers, federal troops secured the Hospital General de Tijuana to ensure the provision of life-saving care. (AP, 2008) In August 2017, gang members attacked a hospital in Guatemala City, Guatemala to free

“Attacks against health care workers and humanitarian assistance include attacks on hospitals and clinics, on ambulances and aid stations, and on patients and medical personnel”.

alleged members of the *Mara Salvatrucha* gang. Seven people were killed in the crossfire. (Perez, 2017)

Attacks against health care workers and humanitarian assistance include attacks on hospitals and clinics, on ambulances and aid stations, and on patients and medical personnel. All of these are part of a broader signature of violence perpetrated by criminal armed groups (CAGs). This violence, or the tactics, techniques, and procedures (TTPs) used by gangs and cartels to further their goals include:

- Drive-By Shootings
- Car Bombs/Grenades
- Kidnapping (*levantones*)
- Blockades (*narcobloqueos*)
- Dismemberment, Beheadings, Mutilation (Mayhem)
- Mass Graves (*narcofosas, fosas clandestinas*)
- Social Cleansing (IDPs/Refugees)
- Information Operations (banners or *narcomantas*, corpse-messaging or carving messages on corpses)
- Attacks on police, journalists, political figures (including mayors)
- Attacks on humanitarian aid and health care providers.

In many cases the gangs operate with near total impunity due to their linkage with corrupt and co-opted government officials together with the corrosive effect of their violent attacks. Mexico and the NCTA are challenged by endemic corruption. In 2019, the Transparency International Corruption Perception Index (CPI) rated them at the

“The situation resulting from extreme cartel and gang domination of communities and territorial control by CAGs evokes analogies with besieged areas.”

higher end of global corruption with Mexico rating a score of 29, Honduras and Guatemala each scoring 26, and El Salvador scoring 34. ⁴ (Transparency International, 2020) The situation in Mexico and the NCTA reflect broader global trends where attacks on health care are prevalent in situations of civil strife and armed conflict, including non-international armed conflicts (NIACs). As a result of these global attacks, the World Health Organization (WHO) has started an ‘Attacks on Health Care Initiative’ to minimize disruptions to health care delivery resulting from attacks during emergencies. (WHO, 2019) This includes attacks related to conflicts, such as conflict disasters, and other humanitarian situations including natural disasters.

The situation resulting from extreme cartel and gang domination of communities and territorial control by CAGs evokes analogies with besieged areas. Humanitarian access is limited and all access requires implicit ‘permission’ of the dominant CAGs. This access must be negotiated (either formally or informally) with the criminal leadership; that is, access must be negotiated with non-State Armed Groups (NSAGs) which can compromise perceptions of humanitarian independence and neutrality. Recent literature, discussed in the next section, increasingly emphasizes the role of humanitarian diplomacy as a mechanism toward achieving humanitarian access and protection of civilians in besieged areas. (Ismail, 2018)

The non-conventional violence in Mexico and the NTCA demands innovative approaches to ensure humanitarian

⁴. The CPI rates states on a range from zero (0), being highly corrupt, to 100, being very clean. The 2019 CPI rated 180 states with Mexico ranked 130/180, El Salvador 113/180, and Honduras and Guatemala tied at 146/180. (Transparency International, 2020)

access, civil protection, and community resilience. Many analysts suggest an integrated humanitarian and development approach. (Stein and Watch, 2017) These combined approaches potentially benefit from engaging NSAGs to enhance humanitarian access and protection. While such engagement is controversial, it promises to yield improvements in security if carefully embraced. The remainder of this paper addresses the challenges and benefits of negotiating with violent non-state actors (VNSAs) / (NSAGs), especially the political and practical ramifications of negotiation with criminal cartels and gangs (GAGs).

4. Garay, L. J. (2007). “Una aproximación a la economía informal en la globalización. Evidencia empírica a propósito del caso de Bogotá y Colombia”. En: L. J. Garay y A. Rodríguez. Colombia: Diálogo pendiente. Vol. II. Políticas de empleo, salarios y vivienda. Planeta Paz. Torre Gráfica. Bogotá. Diciembre.

ENGAGING AND NEGOTIATING WITH NON-STATE ARMED GROUPS (NSAGS): METHODOLOGY AND LITERATURE REVIEW

4

The prospect of engaging non-state armed groups is controversial and complex. While the literature and discussions with practitioners and academics confirm the reality of ad hoc engagements on the ground, formal acknowledgement of the interactions—especially with criminal groups—is often problematic. Broadly speaking, engagement can be narrowly focused to ensure humanitarian access or more broadly focused on instilling adherence with humanitarian norms (as articulated in International Humanitarian Law (IHL) or International Criminal Law (ICL)). It can also be aimed at establishing temporary truces or long-term peace agreements, as seen in the Colombian Peace Accords or Good Friday Agreement in Northern Ireland. It is widely held that engagements with rebel groups with overt political aims are more adept at embracing dialogue to meet their goals. (Krause, 2017)

To assess these potentials, with the specific intent of enhancing humanitarian access and limiting attacks on vulnerable non-combatants and health care workers in Mexico

and the NTCA, first, a review of the literature regarding engaging NSAGs in general and then criminal armed groups (CAGs) in specific was conducted. After consulting the literature, a series of telephonic and/or e-interviews with practitioners and academics engaged in public diplomacy operating in Mexico and the NCTA was performed.

The interviews focused on two inter-related questions:

- 1) How can Humanitarian Diplomacy leverage Public Diplomacy efforts by civil society groups to enhance humanitarian protections and reduce violence in the context of crime wars (civil strife and non-international armed conflict) in the target area?
- 2) What humanitarian diplomacy strategies and approaches are likely to succeed with various types of criminal groups in the target area?

Providing opportunities to enhance humanitarian access is actually well described in the literature. For example, Carter and Haver (2016) document a broad experience with humanitarian engagement with NSAGs while acknowledging that many field staff lack the experience to conduct these negotiations and often are unaware of how to proceed with such negotiations

due to lack of organizational guidance. As a result, the negotiations that do occur are sub-optimal and can compromise humanitarian principles -e.g., impartiality and neutrality.

Hoffman and Schneckler (2011) acknowledge the difficulty of engaging armed non-state actors (ANSAs) while suggesting mechanisms (consistent with Realist, Institutionalist, and Constructionist international relations theory) to engage them. Realist approaches include coercion, control and containment, bribery and blackmailing among others. Of course these are not suited for humanitarian engagement. Institutionalist approaches are based on the power of bargaining, that is mediation and negotiation, as well as co-option and integration, while Constructionist approaches involve persuasion (a key tool of humanitarian diplomacy) to trigger socialization. Social pressure (i.e., 'naming and shaming' actors for atrocities and reconciliation and transitional justice) fit this mode.

McHugh and Bessler (2006) present the United Nations view in Guidelines on Humanitarian Negotiations with Armed Groups. It acknowledges past lack of structure and guidance in pursuing effective negotiations with armed groups involved and emphasizes the need to understand the armed groups, set clear objectives for nego-

tiation including negotiating ground rules for humanitarian action, negotiating humanitarian access, and emphasizing the protection of civilians in accordance with humanitarian law. The need for MOEs (measure of effectiveness) is also discussed. McQuinn and Olivia (2014) emphasized the need to perform a conflict analysis, clarify goals and modalities of engagement, enact an internal decision-making process, determine if direct or indirect engagement is warranted, follow-up on agreements, and continually monitor the group(s) post-negotiation.

In some cases, such as the enactment of “Deeds of Commitment” by Geneva Call (Fazal and Konaev, 2019; Geneva Call, 2018) NSAGs have agreed to adhere to limited humanitarian norms, including protecting health care workers, limiting use of child soldiers, avoiding use of anti-personnel mines, and proscribing sexual violence in war. Despite this limited success, there are many reasons NSAGs may avoid committing to humanitarian norms. They may gain military advantage by such avoidance in the short-term. Perfidy, for example, may make a complex attack against a well-defended objective achievable. Occupying protected sites, such as hospitals and

places of worship, can provide refuge from attacks by state forces. Refusing to give quarter, torture, and symbolic violence like beheadings can break resistance and help solidify the group’s control of territory and the population through terror. (Grace, n.d.; Jackson, 2016) Violating IHL norms may strengthen the group in the short-term, but it may also erode their legitimacy over the long-term. The dynamics of engaging criminal cartels and gangs (CAGs) is reviewed in the next section.

CRIMINAL ARMED GROUPS (CAGS), CIVIL STRIFE, CRIMINAL INSURGENCY, CRIME WARS AND NON-INTERNATIONAL ARMED CONFLICTS (NIACS)

5

Civil conflicts are dominating the world stage. Criminality, extremism, and insurrection fuel crime wars and criminal insurgencies that blur traditional distinctions between crime and war. (Muggah & Sullivan, 2018; Sullivan 2012)

Criminal cartels and gangs (CAGs) dominate major parts of urban areas, such as Brazil's favelas, and large swathes—including cities and entire states such as Tamaulipas—of Mexico and Central America are dominated by criminal cartels and gangs (CAGs). These cartels and gangs don't seek to overthrow the state but seek operational independence and freedom of movement. They also blur the distinctions between crime and politics as they co-opt state officials, erode the legitimacy of state organs, and use corruption and impunity as tools to gain and maintain raw power—criminal and otherwise (Sullivan, 2019).

In some cases, the criminal violence remains that of civil below the threshold of non-international armed conflict (NIAC). In others, the CAGs have achieved sufficient organizational capacity and intensity of conflict to be recog-

nized as being in a state of NIAC. Mexico and Colombia reach the threshold while El Salvador currently does not. (Geneva Academy, 2018) Of course, this is contested by some scholars. Indeed, in recent attacks, it has been seen state forces retreat from armed cartel commandos wearing uniforms, using sophisticated radio systems and employing marked armed vehicles. (Sullivan, 2019) In cases of NIAC, IHL is certainly a factor. Nevertheless, both states and the CAGs themselves may seek to avoid that designation since they believe it may undermine their legitimacy and/or freedom to operate according to their own terms. In any event, the contours of criminal conflict and IHL are evolving and new legal approaches may be necessary to cope with the convergence (Watkins, 2016; Muggah & Sullivan, 2018) Notwithstanding definitions, mitigating the insecurity and extreme violence while protecting the populace and enabling humanitarian access is necessary, if not a paramount consideration despite the recognized level of conflict and applicable legal regime.

For Mexican security analyst Alejandro Hope, it is possible to negotiate with criminals, but the desirability to do so is a more complicated question. It is possible that negotiating with criminals may undermine the supremacy of the law. Yet gang truces

and initiatives toward demobilization, disarmament and reintegration have been successful in mitigating violence. (Hope, 2012)

Eertwegh (2016) argues that negotiations with CAGs follow similar parameters as those with other NSAGs and should be part of a broad social agenda not focusing solely on crime or violence. Civil society should be part of that engagement. Challenges identified by Eertwegh include avoiding conferring political legitimacy to the CAGs—even though they may already exercise a degree of social and political legitimacy in the areas they control. Negotiations may also give CAGs time to elide government intervention or undermine the rule of law and disrespect victims of crime, and/or incentivize criminal activity.

For Planta & Dudonet (2015), there are both opportunities and risks of engaging CAGs. They can become instruments of violence reduction or become a means of empowering criminals. Both have political ramifications. Determining when to engage relies upon the political agendas of the group. While cartels and gangs seek to avoid overt political and electoral influence, they do exert subtle overt influence to protect their economic interests and power base. This includes assassinations of political officials, often at municipal levels. Legal factors and internal support (or ripe-

ness) for dialogue is also a prerequisite. External support is also beneficial.

In dealing with Brazil's prison-street gang complexes, like the PCC or *Primeiro Comando da Capital*, Lessing noted that the gang used rioting, brutal displays of violence, including beheadings, together with simultaneous attacks outside the prison to influence state and prison policy. He later went on to call this synchronized action 'violent lobbying.' Lessing observed that some state officials saw negotiation as a means of containing the violence. In his words, "These deals [with gangs in Brazil and El Salvador] have saved lives and pacified urban war zones, but they also strengthen prison gangs and set precedents that could encourage similar groups." (Lessing, 2014)

In assessing the Salvadoran gang truce, Rahman & Vuković (2019) argue that scholarship on criminal non-state actors or gangs (i.e., non-ideological criminal associations) is sparse despite the growing role of CAGs in violence worldwide. They see negotiation with CAGs as plausible and requiring a three-step process including: 1) State-sponsored mediation to establish cease-fire between gangs; 2) Negotiation

between the state and conflicting gangs; and 3) Mainstreaming reformed criminal structures and transitioning them into legitimate and legal actors within society. In their view, there is a 'trilateral conflict' between gangs and the state. Engagement to mitigate this conflict assumes that the public is hostile to gangs and does not generally support dialogue with gangs as a result of their victimization. They further assume that gangs do not project political positions but do possess underlying interests that inform their preferences (this is the conventional position but is not always the case). They also assume that the state is unable to contain the gangs, or achieve escalation dominance, without fundamentally altering the nature of the state. Finally, they assume that conflict exists between the various gangs themselves, and between the gangs and the state.

Power asymmetry is ever-present in relations between states and CAGs. Clements (2018) In his assessment, the international legal regime regarding NSAGs is immature and underdeveloped. Absent this foundation, persuasion (i.e., humanitarian diplomacy) gains currency. Clements also emphasizes that while IHL does not confer legiti-

macy or affect the legal status of NSAGs or CAGs,⁵ both CAGs and state authorities may see negotiations differently, with both potentially seeing negotiations as limiting their range of action and perceived legitimacy.

Urban armed groups (UAGs), otherwise known as gangs, are a concern for Schuberth (2017). In his view, the status of gangs and other NSAGs is blurring, a concern shared by Hazen (2010). For Schuberth, Haiti's urban slums are instructive since humanitarian actors find navigating their spaces (gang-ruled *quartiers populaires*) difficult without tacit approval of gang leaders. He also recounts the view of the UN OCHA civil-military co-ordination officer in Haiti that when humanitarian organizations talk to gangs about humanitarian activities and access they don't confer legitimacy on them since it is widely recognized that the humanitarian groups have humanitarian objectives.

Schuberth observed that non-engagement through retreating from gang-ruled areas had negative impacts, as did paying off gangs for access. Indeed, paying off gangs is the worst option. Entering the gang-

ruled 'criminal enclaves' with civil society partners was the best option. Interference with humanitarian access could be limited by embracing community platforms including businesses, educators, health care providers, and civic and religious leaders. The UAGs could be integrated into this platform of 'genuine' civil society in order to ensure aid reaches vulnerable populations.

⁵. See Article 3, Common to the Four Geneva Conventions, 1949. Available at <https://ihl-databases.icrc.org/ihl/WebART/375-590006> [Accessed December 10, 2019].

RESTORING EQUILIBRIUM: HUMANITARIAN ACCESS AND NEGOTIATIONS

6

Restoring community equilibrium is a complex endeavor. It requires an understanding of the conflict (criminal or otherwise), knowledge and understanding of the communities and NSAGs and CAGs involved, and knowledge of the state, its capacity, and perceived legitimacy in the area(s) involved. Not all NSAGs are amenable to humanitarian engagement. Certainly not all are willing to openly embrace humanitarian commitments. As Margarita Kovaev, a research fellow at Georgetown University, wrote in her e-interview (15 October 2019):

“[S]ome groups engage with Geneva Call and sign their Deeds of Commitment because there are tangible benefits of signing, such as aid in demining efforts and assistance to victims. Humanitarian diplomacy strategies are therefore more likely to be successful if they can provide resources or some type of help to the community, which the armed group, in turn, could claim it was instrumental in securing. The point here is that appeals to IHL obligation, the group's reputation or self-image, and things of that nature can go only so far without tangible benefits the group can lay claim to in one way or another.”

The groups involved, rebels with clear political aims and CAGs, may view engagement through a different lens. Are they interested in pursuing profit or extracting resources or do they have transient utilitarian objectives that influence openness to humanitarian engagement in order to sustain their legitimacy? After all, some CAGs have employed ‘utilitarian provision of social goods’ to secure their status in the community. (Sullivan and Bunker, 2017)

Public diplomacy can become a vehicle for achieving this recognition. As Matt Armstrong, a specialist in public diplomacy and former Governor of the Broadcasting Board of Governors, stated in an e-interview (15 October 2019):

Trying to use NGOs or GONGOs or government programs to advise non-state armed groups that adhering to norms is in their advantage requires advising them that failure to adhere to the same norms will bring disadvantage to them. Understanding that not all groups are the same though many share common causes and desires, your question is how to communicate with and influence them to follow certain rules while they pursue their own objectives.

Whatever public diplomacy strategies are embraced, according to Armstrong, “require a unification of words and deeds, policies and statements. It requires policies and activities that support and are supported by the words.”

Reflecting on the Colombian experience, Eduardo Salcedo-Albarán, Director of the

Scientific Vortex Foundation and specialist in transnational criminal networks, in an e-interview (28 October 2019) cautioned that: “Now, regarding non-state armed groups that remain operating in the criminal spectrum, the acceptance of humanitarian norms was a complete failure in Colombia, for instance with FARC, AUC, and then the several BACRIM that appeared. In Colombia all of these groups continued recruiting children.”

For Robert Muggah, Research Director at the Igarapé Institute, engaging CAGs through Humanitarian Diplomacy has promise:

“Humanitarian and development organizations can potentially exert more leverage to shape protection of civilians than they realize. Specifically, their physical presence can in some cases translate into more protection of — and access to—vulnerable populations. For example, the deployment of international and national staff—some of whom may have diplomatic immunity—may restrain the activities of non-state actors. A prime example of this is the ICRC and IFRC that have a mandate to operate in a variety of settings, including those falling below the threshold of ‘war’.”

Humanitarian protection is desirable, yet challenges political dynamics. NSAGs are sources of welfare, protection, and authority. They also provide human services. Gangs and cartels influence the local equilibrium/balance of power. Many communities demand a *Mano Duro* approach to criminal violence, and many NSAGs

have latent political power. CAG leaders, however, lack experience in legitimizing their economic power and turning their local territorial control into durable social action.

Ivan Briscoe, Latin America program director at the Crisis Group, in an interview with the author (8 November 2018) said:

Humanitarian diplomacy can bring short-term gains; deepening this to achieve longer-term violence reduction requires greater research and engagement. In areas where CAGs are more powerful than the state, negotiation can facilitate ‘local’ peace-building efforts, which might involve some unpalatable transactions. But ultimately that peace will only be sustainable if such a negotiation can somehow be moved onto a more political footing.

Essentially humanitarian diplomacy and engaging CAGs is a transitional process that confronts alternative assemblages of power. New forms of political engagement are needed to achieve this transition.

CONCLUSION: PROSPECTS AND BARRIERS TO HUMANITARIAN ENGAGEMENT WITH NSAGS AND CAGS

7

Engaging and negotiating with NSAGs and CAGs is a controversial proposition. Clearly, police and humanitarian organizations have a long informal history of such interaction. These interactions are largely low-key and tactical in nature. A local police commander or gang investigator may approach a gang and seek to moderate their violence. Humanitarian actors may seek humanitarian access and encourage conformance with humanitarian norms, yet competing interests and power-counter power dynamics come into play.

Engagement—at least publicly—is constrained by fears that dialogue confers legitimacy on the armed group, which cuts both ways, as some CAGs may fear that ‘their’ legitimacy and potency is challenged by dialogue. This paper marks an early attempt to explore the possibilities for humanitarian engagement with CAGs in Mexico and Central America (the NTCA). The topic warrants additional research and active consideration as a means of moderating the extreme violence seen in these fragile and contested areas.

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8

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