

# LA AMENAZA DEL CRIMEN ORGANIZADO CON REFERENCIAS PARTICULARES A AMÉRICA LATINA - UN MODELO TEÓRICO DE ANÁLISIS

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## ABSTRACT

The current study within its first section discusses political relationships and their impact on social phenomena, including organized crime and its trans-national manifestation. This aspect is studied in the context of the tensions and relations between different Latin American countries with special emphasis on U.S. policy. The second section, relates to the globalization process and how it can partly account for the current rise of transnational organized crime. It scrutinizes the role of the nation-state and the unbreakable link between the domestic and international arena. The third section focuses on the economic factors and definition of what is legal or illegal. In this context, the state as a political construct will be focused in order to denote its role regarding the current questioning of the value of the concept of sovereignty in a globalized world. The fourth section examines social and cultural elements such as: tradition; the forms of authority; and the factors that contribute to the rise of criminal activities. It correlates the levels of violence with the ability or inability of the State to assert its authority. The study concludes by proposing a theoretical model for addressing the issue of transnational organized crime, in a holistic manner instead of in terms of a particular region, a specific factor or political advocacy. The proposed model addresses transnational organized crime from two angles: the financial economic matrix and the circulation of power -as an ability to impose authority. Both pillars converge in the market as a meeting point, between legal and illegal world.

**Keywords:** Organized crime; transnationalization, globalization, illegal world.

## RESUMEN

El presente estudio, en su primera sección aborda las relaciones políticas y su impacto en el fenómeno social, incluyendo el crimen organizado y su manifestación transnacional. Este aspecto es estudiado en el contexto de las relaciones y tensiones que han mantenido los países latinoamericanos, con especial referencia a la política de EE.UU. La segunda sección, enfoca el proceso de globalización, estableciéndose cómo este podría explicar parcialmente la actual transnacionalización del crimen organizado. Para ello se analiza el rol del estado-nación, destacándose las conexiones entre los espacios domésticos e internacionales. La tercera sección enfoca los factores económicos y la determinación de lo que se cataloga como legal e ilegal. En este contexto, el estado como constructo es abordado desde el cuestionamiento del valor del concepto de soberanía en un mundo globalizado. La cuarta sección examina los elementos sociales y culturales tales como: la tradición, las formas de autoridad; y los factores que contribuyen al crecimiento del crimen organizado. Se correlaciona los niveles de violencia en base a la capacidad o incapacidad del estado para imponer autoridad. El estudio concluye mediante la propuesta de un modelo teórico de entendimiento del crimen organizado transnacional, el cual posee un abordaje holístico, no circunscrito a una región, a un factor específico o una tendencia política. El modelo propuesto aborda el crimen organizado transnacional desde dos ángulos: la matriz económica-financiera y la circulación de poder -entendida como la habilidad de imponer autoridad. Los dos pilares convergen en el mercado como el punto de encuentro ente el mundo ilegal y legal.

**Palabras claves:** Crimen organizado; transnacionalización, globalización, mundo ilegal.

## **INTRODUCTION**

### **THE ISSUE**

Trans-national organized crime is considered as being a dynamic of the globalization phenomenon. However, it was the huge volumes of drug trafficking in the Latin American region in the 1980s, that put this topic on security agendas that were not only regional, but global. In principle, the focus on the so called “war on drugs,” overshadowed the wide range of activities that are today understood as transnational organized crime. Thus the leading role played by, the so-called “Cartels” of Cali and Medellin, in Colombia, changed the interpretation of transnational organized crime to mean large structures highly hierarchical, which encompassed the entire business, from production to distribution and sale. Nowadays a “new class of drug traffickers have taken over in Colombia, (...) more discrete and much harder to catch than the members of the old drug cartels, and their smuggling methods have evolved” (Economist, 1999). The subsequent linkage of international organized crime to the insurgent and terrorist activities of illegal armed groups in Colombia and Peru, has led to a creative use of terms such as the “narco-guerrilla” or “narco-terrorism”, that now also extended to other latitudes. The rewards given by the US through financial and trade preferences by the efforts in the so-called “war on drugs has engendered distrust between the US and most Latin American countries” (McCulloch, 2007). This situation has prevented the development of regional strategies, limiting multilateral and bilateral cooperation. But the concentration has mainly been on drug trafficking, to the neglect of a multiplicity of related activities.

### **PROGRESS AND SETBACKS, AN INCOMPLETE LOOK**

The increasing media coverage of violence relating to criminal activities such as human and arms trafficking, kidnapping for ransom, and money laundering, among others has mobilized several organizations both national and international, to flag these issues on the international security agenda. The issue has been studied not only from the academic point of view, but also within many government’s agendas on region, in order to develop international instruments (United Nations, U.N Office on Drugs and Crime, Vienna International Ctr, and Austria , 2010). Despite these advances there is no consensus on how transnational organized crime should be prevented (Wilson, 2009). However, most of the solutions offered are extreme. Some call for the excessive use of violence by the nation-state, by employing military contingents, as in the case of the famous Plan Colombia (Gill, 2009) and the so-called Merida Initiative (Malkin and Randall, 2010). On the other hand, the proposal to take the legal route are also gaining ground, as the restrictions on the sale of weapons, subsequently in the US, the discussion on being flexible regarding the consumption of certain drugs, or the necessity of refocusing on public health issues have been on the public domain. In this regard, political analysts question the use of state violence as a tool for the management or prevention of organized criminal activity. If there is an agreement on the issue, it is that the necessity is to address this phenomenon beyond national boundaries and thus, it requires multilateral treatment.

### **STATEMENT OF THE PROBLEM**

Several important legal instruments and agreements have been configured over the past two decades, to deal with transnational organized crime. Policies in the Latin American region advocates a global discussion of the subject without that is not influenced by the particular

interests of the great powers, especially the U.S. It is also necessary to arrive at an understanding of the different facets and activities of transnational organized crime without losing sight of its political nature.

This analysis focusses on the situation in Latin America, especially in terms of historical references. The correlation with other extra-regional events outside the Latin American region, similar or contradictory in nature, will enable a holistic vision and understanding of the phenomenon known as “transnational organized crime”. Also, it will help identify the features that are common between criminal organizations in Latin America and the rest of the world. Additionally, this will constitute the empirical basis for developing a theoretical model of analysis to make policy and strategic recommendations.

#### TRANSNATIONALIZATION OF ORGANIZED CRIME: POLITICAL ADVOCACY

And many security challenges in the Americas are transnational, including..., illicit trafficking, organized crime, terrorism, and weapons proliferation.

Raymond T. Odierno (2012)

#### DRUGS, THE STARTING POINT OF A HIDDEN AGENDA

From an empirical perspective, the trans-nationalization of organized crime is conceptually linked with “drug trafficking”. This connection was established following the process of “securitization” (Buzan, 1998), initiated by the US, through the National Security Decision Directive 221 (United States of America, Department of State, 1986), issued by President Ronald Reagan in 1986, in which it declared the “war on drugs”. It is important to highlight that this problem was not new, nor was it a novelty, given the San Francisco prohibition of opium consumption in 1875 or steps taken by the Shanghai Opium Commission and its subsequent impact on the ratification of the “International Opium Convention of The Hague”, in 1912. This latter is considered to be the first multilateral treaty against illegal drug trafficking (Wright, 1909), which influenced the latter prohibition of the production and consumption of alcohol in the US in the 1920s. In this context, the launch of the “war on drugs” by President Richard Nixon in 1971 and the subsequent setting up of the Drug Enforcement Administration (DEA) in 1973, were a part of a series of steps, which led the US to declare “drug trafficking” as a threat to its national security, and the subsequent militarization of the international security agenda (Trinkunas, 2013).

The launch of the National Security Decision Directive 221 was not a mere discursive act; it had the immediate effect in the passing of the Anti-Drug Abuse Act of 1986 (United States of America, Library of Congress, 1986). In Latin America it led to harsher domestic laws against trafficking, and the inclusion of the military in anti-drug operations. All this within the framework of a series of military assistance policies linked to “commercial and financial” preferences and rewards under the direct auspices of the US. As an example, it was the controversial agreement called the Andean Trade Promotion and Drug Eradication Act (United States of America, Office of the U.S. Trade Representative, 2002). Despite this agreement was recently cancelled, the reward-punishment scheme is currently maintained under the same concepts (Andreas, 2013). The targeted use of military force in no sense implied the direct participation of the US military apparatus in operations against drug trafficking, except in the case of the capture and subsequent extradition of General Manuel Noriega in Panama, “who allowed Colombian cocaine and dirty money to flow freely through the country until he was overthrown by the US in 1989” (Andreas, 2013).

## A CREATIVE PHASE FOR CONCEPTS

It is noteworthy, that the National Security Decision Directive 221 already included the potential involvement of criminal groups with terrorist organizations, but it would be the attack perpetrated by Al Qaeda in 2001 on the World Trade Center, that had the greatest influence on the international crime-terrorism narrative.

These links, between organized crime and terrorism, show a creative phase of concepts and terms, such as narco-politics, narco-state, narco-guerrilla and narco-terrorism emerged during this period (McCulloch, 2007). These theoretical constructs have been criticized for being excessively subordinate to U.S. foreign policy interests. In this context, the punishment for traffic and consumption of illicit drugs in the U.S. was saturated by a high patriotic sentiment, which has been manipulated to combat drug trafficking. This connection strengthened the increasingly functional linking of “transnational organized crime” with the problem of illicit drug trafficking (Treverton, 2009), thus overshadowing, the real dimension, diversification, and nature of the phenomenon itself. Thus, for example, the violence in Mexico has been facilitated by ease of the purchase of weapons in the US (over ninety percent of the guns), or illegal migration, among other issues, that were given scarce importance until the beginning of the last decade (O’Neil, 2009).

## INTERNATIONAL CONCERNS

In this sense, the efforts made by the “United Nations Office on Drugs and Crime” (UNODC), through its 2012 advertising campaign termed as “Circulation”, evidences the distortion of an excessive focus on drug trafficking, which had covered the diversity of the transnational organized crime activities. The money in narco-trafficking, according to these data amounts to less than 40 per cent of the total amount (United Nations Office on Drugs and Crime, 2012) of the diverse aspects of transnational organized crime. Modifications and inclusions of a series of legal instruments relating to organized crime and terrorism, both within the framework of the United Nations (U.N, 2013) and of various regional organs, such as the Organization of American States (OAS, 1986), can be seen as resulting from the securitization process mentioned earlier, as well as by the incorporation of the “human security proposal”, in the U.N Development Program in 1994. This new vision, as opposed to a security focused exclusively on the state-nation, includes a series of violence dynamics outside the traditional concept of security. Also, it places the human being as object of reference that has to be protected. However, this re-dimensioning of the security concept is not only confusing in its practical application but it has facilitated the “securitization” of any thematic or the easy link of two or more, as it is the case of drug-using and terrorism. This conceptual vacuum “leaves room for the distortion of human security to serve dubious purposes” (Jolly, 2006).

As stated above it is possible to reaffirm the premise that the “organized crime” phenomenon and its “trans-nationalization” was largely conceived as per the US security agenda for drug trafficking. In this sense the real problem of the diversification of “organized crime” in Latin America was simplified as the “cocaine business”, in countries such as Colombia, Peru and Bolivia, which for many years overlooked structural issues such as public health strategies and the money laundering in the US itself, or the massive “arms trafficking” from US to the south of the continent. These issues and others such as smuggling and human trafficking are part of the security problems faced by the majority of countries in the Latin American region. It should be pointed out that criticism made of the US security agenda in Latin America, does

not ignore linkages between transnational criminality and terrorism. “If we accept the idea that countermeasures purportedly aimed at transnational crime have other unarticulated agendas, then the impact of transnational crime countermeasures might be best understood as failures that are really victories in terms of these hidden agendas” (McCulloch, 2007). It is important to point out that the threats can be accepted within different perspectives, because they are under the extraordinary influence of “constructive actors”, such as US, regional powers, preeminent international organizations, highly visible NGO’s, etc.

This narrow perspective of “transnational organized crime” requires the exploration of other perspectives and theoretical approaches, to understand its new dimensions and current dynamics. The following sections investigate if the transnationalization of organized crime can be reconstructed from other “objective realities” such as the process of globalization.

**DYNAMICS OF GLOBALIZATION AND CRIMINAL ACTIVITIES**

Globalization is a journey. But it is a journey toward an unreachable destination -- the globalized world.

Martin Wolf (2001)

**BACKGROUND**

For some analysts, the transnational organized crime constitutes the dark side of globalization. This phenomenon “has been good not only for legitimate businesses but also for those who traffic in illegal drugs, evade sanctions or taxes, trade stolen goods and intellectual property on the black market, smuggle immigrants and launder money” (Andreas, 2012). There is no doubt that organized crime forms part of the global economy. The volume of illicit transactions would amount to an estimated total of \$870 billion annually (UNODC, 2012), which is - only for the purpose of reference -25 per cent higher than the annual defense budget of the US. Below is a pie chart of the situational analysis on organized crime (Fig. 1).

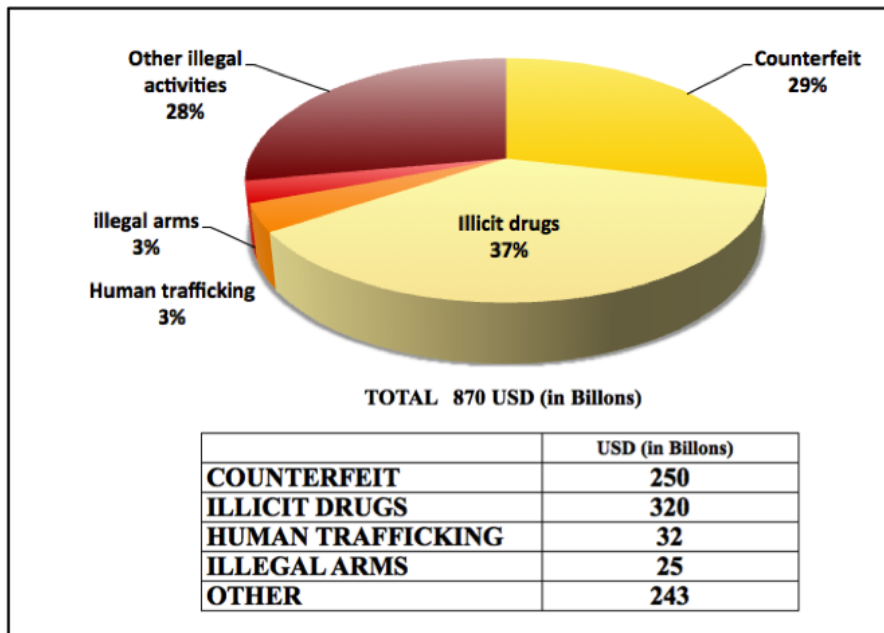


Fig. 1: Estimated revenues per illegal activity (UNODC, 2012).

From two to five per cent of global GDP is the annual volume of capital recycled by money laundering operations, which is estimated by the UNODC (Inkster and Comolli, 2012). Such high volumes of money require illicit businesses to utilize all the available “modern management” systems, used by multinational companies. To achieve this purpose, they employ armies of lawyers, accountants, information technology experts, managers etc. (Naím, 2012). These ‘companies’ have their bases of operations in different countries, to adapt and take advantage of the legal framework of each jurisdiction to enable them to achieve greater competitiveness. However, these observations may lead to the erroneous conclusion that the current transnational criminal organizations are comparable to large transnational corporations, which forms part of the current academic debate.

## **GLOBAL ENTERPRISES VERSUS CRIMINAL TRANSNATIONAL ORGANIZATIONS**

Even formal and legal differences, between global companies or trans-national criminal organizations, there are substantial ones to be considered. Large transnational enterprises are corporations that employ large-scale information systems and technology platforms to directly support the management, structured logistics systems and have high levels of visibility. On the other hand, their financial movements are far superior to those of criminal organizations. “No criminal group comes remotely close to ExxonMobil or Apple in size or power.” (Andreas 2012). This does not imply that criminal organizations do not have sophisticated computer equipment or modern systems of communication and information. Neither does it mean that they are not supported by complex networks, such as those used by the so called global companies. The substantial difference between the two is the high level of integration attained by transnational corporations. The “cartel structure approximated a pyramid with the leader employing several hundred employees” (Thomas, 2011) was common in the now disappeared Cartels of Cali and Medellin, in Colombia, and in a sense is continued by the current Cartels of Mexico (Bonner, 2010). However, it is not the common denominator in most of the current criminal organizations, such as the emerging criminal gangs in Colombia (BACRIM), the Russian Mafia or the Japanese Yakuza.

There is a trend among present day criminal organizations to use the model of networks, specialize in specific areas, divide the chain of production, transportation and marketing among cells or differentiated criminal organizations, with high levels of autonomy and complete independence. All this activity is conducted and executed from several countries and even regions of the world. In a recent survey criminal gangs were reported in 66% of large cities, as well as in suburbs (47%), small cities (27%), and even rural areas (18%), most of them have links with major criminal organizations (Thornberry, 2003). These organizational and transnational criminal networks’ operational practices reduce the chances of success of strategies such as the “divide-and-conquer strategy” and the “kingpin” (Liddick, 2004), employed with great success in Colombia in the 1990s. Both strategies are being currently employed in the fight against the Mexican criminal organizations (Bonner, 2012), and are some of the options from the proposals menu that have been suggested as part of the solution for tackling the organized criminality in Afghanistan (Sullivan, 2012). The elimination of the leader of the network systems, either at higher levels or at the cell level in a criminal organization, does not create a dramatic leadership void. At the same time, it makes it difficult to track the elements of the entire structure or its external contacts. These aspects of the management of illicit businesses in a globalized world and the problems of the exercise of authority in the clandestine world will be discussed in greater detail later.

States and international organizations find themselves unable to deal with these sophisticated structures, in the context of an open and global economy. Therefore, ungoverned spaces are identified as those ranging from the real, physical or geographical, as in the case of large rural areas, the increase of urban concentrations, mass transportation systems, the devastated border regions, or the coasts and ocean masses. In addition to these are the virtual spaces, such as finance or cyberspace (SYMC, 2011).

## **THE CONNIVANCE OF THE STATE**

As indicated above it is not always the State that demonstrates its inability to intervene and place order. In some cases, there is an “accomplice” interest, not necessarily correlated with the corruption or inefficiency prevailing in the state bodies, which is another factor that will be analyzed further. There are particular situations that reveal the intentional permissiveness of states. There are three traditional ways that put the state in an unclear symbiosis with criminal organizations:

The first of these are the tax heavens or facilities provided by offshore banks. These so-called tax havens are countries or territories that maintain low-exception or total-exception systems on the payment of taxes, as are the cases of Bahamas or Panama (Leong, 2007). At the same time they have reduced control mechanisms in financial flows. These schemes facilitate the avoidance or reduction of tax payment where economic activities really take place (production and trade), attracting resources from the legal economy -mutual funds, insurances firms, offshore business, etc. (Wechsler, 2001) -as well as from money laundering.

The second way is the lack of commitment in the state facing massive smuggling of certain products. The price differential, created by tariff systems or production deficiencies or chains of local commerce, make areas susceptible to smuggling. On the one hand they provide “employment” to populations that without this illegal activity would be in a worse social-economic situation transform. On the other hand, encourage tax evasion and contribute in the spirals of local violence, due to the impossibility of using the legal system or institutions. Specific cases, such as the smuggling of subsidized products, drain the fiscal resources of a country, benefiting the neighboring countries. Areas such as the so-called Tri-Border region (Sullivan, 2002) in Brazil, Paraguay and Argentina are examples of governmental interest barely clear. An interesting case is that of the recent legal regulations imposed in the referred area, which seek to regulate the collection of local taxes, but do not seek, in essence, to impose controls on illegal trade activities. Examples of these illegal practices in connivance of the states are widely common in several Latin American countries in the treatment of intellectual property, as software and film piracy

The third situation occurs when states, “turn a blind eye” to the counterfeiting of consumer products. In this case too, it is possible to discern the mutual benefits of the parties involved, or the exclusive benefit for one of them, such as the generation of “employment” or to satisfy a market demand, as is common in optical-disc piracy (Treverton, 2009).

## **THE REVIVAL OF OLD PRACTICES**

Organized crime without the advantage of a globalized economy would not enable it to be described as “transnational”. Nevertheless, the performance space that goes beyond borders and crosses state domains, does not fully explain its functionality. The interconnection and

economic interdependence in the world today can be described as per the mercantilism of the late 19<sup>th</sup> century and early 20<sup>th</sup> century. In view of this, there are academics, as Martin Wolf, who claims that the phenomenon of globalization as such is not new and that its theoretical construction is simply because of a greater intensity of action or the impact of world trade or due to communication technologies. In fact, technology has reduced the barriers limiting integration, which includes “market liberalization, and the global integration of the production of goods and services” (Wolf, 2001).

However, the current situation of organized crime is not a contemporary reproduction of the criminal activities of romantic pirates, or activities relating to the illegal slave trade after its ban in the 19<sup>th</sup> century. “While (the organized crime) existing for hundreds of years through the commercial activities of European colonial powers, transnational crime expanded rapidly in the latter decades of the twentieth century” (Liddick, 2004). The concept of maritime piracy (Battersby et al., 2011) for example, is similar but is diverse in terms of its shapes and volumes. Therefore, the maritime piracy at large-scale in East and West Africa thus differs from the acts of piracy off the coast of Colombia, Ecuador and Peru, where this activity is concentrated in the South American region. According to ICC report in this region occurred only “17 cases of maritime piracy, compared with 150 and 104 reported in Africa and Southeast Asia respectively” (International Maritime Bureau, 2012). As for the so-called “slave trade”, extortion and exploitation networks have increased not only in Latin America but around the world (Kapstein, 2006), deceiving the early belief that regarding its complete abolition when the UN passed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which the General Assembly approved in 1949. With this act the UN updated the international agreements from 1904 and 1910 relating to the suppression of the white slave traffic.

There is thus sufficient evidence for the broad diversification of activities of international crime. In addition to the cases listed, for example fast-growing illicit markets in counterfeit products or industrial waste are just some cases with no historical precedent. The “trafficking in human organs (...) has been confirmed in Argentina, Brazil, (...) and Peru, in most cases with Swiss, German, and Italian buyers” (Liddick, 2004). The illegal trade in exotic plants and animals is classified as environmental crime. Along with this, the urgent need to legalize large amounts of money is also a marked difference from the past, given today’s electronic money-transferring systems. Latin American indices of money laundering, either through banks and other channels, are higher than the world average, but lower than those of South Asia. The interrelationship among criminal organizations is widespread and in some sense can be termed as being globally interrelated.

“...drug lords in South America have formed joint ventures with criminal organizations in France and Italy, who have formed alliances with gangsters in Poland and Russia, who have completed the circle by establishing relations with organized criminals back in Latin America” (Liddick, 2004).

New trends and changes brought about by the phenomenon of globalization, do not mean the end or weakening of the nation-state (Wolf, 2001), but do show that the intensity of criminal activities may impact the concept of sovereignty, which it is a cornerstone of the international system. The fact that transnational organized crime necessitates the violation of the so-called “borders”, requires that the role of the state be scrutinized. This will not only enable an understanding of the primacy of the state in the “globalization game”, but the unbreakable link between the domestic and international arenas.



## NATIONAL STATES, AUTHORITY AND THE LEGAL FIELD

Territory is not ‘territoriality’. But territoriality as a legal construct that marks the state’s exclusive authority over its territory has become the dominant mode of understanding territory.

*Saskia Sassen (2013)*

The world today shows a strong interconnection of internal and external threats (Annan, 2005). This situation is an evident of an increment of common problems on issues such as transnational organized crime and the conditions that favor their development. The agendas of sovereign states in many cases prevent the designing of cooperative policies in the international context. In Latin America this natural phenomenon has been greatly reinforced by the historical distrust of US policy and the lack of a regional leadership that addresses common aspirations. In this context, it is necessary to extend this analysis to the state, its capacity for delimitation the areas of legality, the exercise of authority and its impact on the international fields.

## THE NATION-STATE AND THE CONSTRUCTION OF LEGALITY

Dominance in the framework of the state, can be understood as “...the probability that certain specific commands will be obeyed by a given group or person” (Weber, 1978). Legal authority has as its identifiable source the law, which implies that obedience is produced by the legality. Thus, the encoding of mandates at the legal level results in limits imposed on those who operate within the state jurisdiction, both in the public and private fields. This exercise creates two areas, which despite the existence of some grey areas, separates the permissible world from the illicit world.

Crime is the opposing viewpoint of law. Crime as a social phenomenon can be explored from various theoretical positions, such as the constructionist, social control and the critical theories. Therefore, it is possible to also understand that the binomial crime-society intersects with the concept of legitimacy, which can be understood as permitted and forbidden spaces. Thus, the argument that the “criminal status is defined by those with power (the authorities) and imposed on those without power (the subjects)” (Zembrowski, 2011). It is important to understand this, as the argument of legitimacy is not only used to highlight compliance with the law, but to evade it, even by the state’s own agents. Therefore, the application of the law carries does not only have limits but interpretations, which vary according to historical circumstances, culture, and social pressures. Despite this anomaly, “lawful or permissible” and “illicit or forbidden” spaces are dynamically adjacent and mark these two different areas.

### The Sovereignty of the State and the International relations

Despite the high degree of economic integration and the progress in the mechanisms of international relations, the state is the sovereign authority within its “domains”. The invasion of sovereign spaces creates resistance and friction between States. The resistance to US policy in the Latin American region, since the First Conference of American States in 1889 marked the beginning of the persistent mistrust with regard to that country. There have been points of approach following external events such as the dynamics created by World War II and the subsequent Inter-American Treaty of Reciprocal Assistance. But at the same time, there have been concerns in the context of left-trend social movements in the region and the consequent US intervention in domestic policy matters. These facts include the failed invasion of Cuba in 1961, the military occupation of the Dominican Republic (1965-1966),

the covert operations by the Central Intelligence Agency (CIA) in support of the bloodthirsty governments in Nicaragua (1967-1979), or the clear political and military support for the UK in its war with Argentina in 1982.

The sovereign authority of states and opportunities for adhesion with international normative instruments are part of the game of relations between States and international actors. The nascent Union of South American Nations (UNASUR) and its South America Defense Council (CDS) have become a political tool for South American integration, and its fairly united efforts on issues of regional security, and its open criticism for the US historical position. Despite these contradictions, it is important to note that the tackling of transnational organized crime requires the convergence of domestic and international efforts. In this task the state is the lynchpin in its role as builder of legality since the international institutions are the political arena where states bet to project their own proposals.

## THE STATE AND THE MARKET

The market is one of the spaces of interest for states. It is the place where all convertible transactions to monetary value begin and end, regardless of their legal status. The varieties of actors involved therein are subordinated to rules of game that in a strict sense are formulated by the States themselves. Government, labor unions, chambers of production-economic, entrepreneurs, customers, financial and the banking sector, among others, require the State to have a system that provides legal certainty and exercise capacity of the law, respecting property rights and creating safe conditions. Then, the state provides the basic conditions for the functioning of the markets, such as legal certainty and respect for property rights. These places the state in a position of undeniable value, despite points of view that questions ability to stand up to global economic integration processes.

Working in the field of the forbidden, increases the cost of the economic transaction. If the completion of a transaction for a legal or unlawful service is greater than the cost of banning it, conditions will be conducive for someone to risk violating the obligatory ban. There are several examples that show how the level of profits from the illegal world creates this logic, and the resultant evasion of laws and regulations. A kilo of cocaine in Colombia is valued at \$2,000, while its retail price in the US is \$130, 000 (El Economista, 2012). The smuggling of migrants is another highly profitable illegal business, “since 90% of them are assisted by smugglers, the total income for the smugglers is likely to be around \$6.6 billion per year” (U.N Office on Drugs and Crime, 2011), according to the 2010 data. This illustrates how the profit margin encourages the growth and reproduction of the criminal activity, as explained from different theoretical perspectives that believe crime to be caused basically by economic motivators (Jacob, 2011).

In a political economy, and if you were living in a perfect world where states did not regulate economic transactions, organized crime would not make sense, as there would be no tariff regimes, regional and global trade agreements, trade regimes, customs regulations, etc. The market will be the definer of the goods or services required, based on supply and demand, since there would be no prohibitions. Recent proposals –during the VI Americas Summit in 2012– against the so-called “fight against drugs”, one of the issues discussed was total decriminalization and legalization for drug use (Los Angeles Times online, 2012), as is part of an international debate (Council on Foreign Relations, 2012). This would substantially diminish transaction costs, theoretically obtaining an effect similar to that of the lifting of the “prohibition on alcohol” in the US. Any permissiveness in the production, marketing and consumption will be defined by

a boundary of law. Therefore, such solutions can become the “panacea”, since they do not rule out future demand for new drugs, or the development of the “counterfeit industry” as is still the case in the case of alcohol and tobacco (Forzley, 2003).

## **THE EVOLUTION OF THE STATE AND THE VIOLENCE PHENOMENON**

It is difficult to establish a common pattern for the evolution of states in Latin America. There are important aspects that could be highlighted as the historical denominators of the state structure in the region. One aspect was the subordination of national identities to the political interests of the ruling classes. In practice, their independence was the result of the consolidation of the new ruling class. This has generated internal revolts around the years 1900s, which flagged many populist struggles. Facing a problem in the formation of national identity, the military forces played a cohesive role as well as that of controlling and suppressing social expression. The culture of “evading the law” became part of the collective imagination that saw in this reaction a natural justification of survival against the domination and exclusion. Latin American military forces have played a role in matters of internal security, and have been linked to the anti-communist fight hosted by the US. In general, military forces have been the target of controversies because of cases of human rights abuses especially in Argentina, Paraguay, Chile and Brazil during dictatorial periods (Pion-Berlin, 1994). Despite the fact that most of these events had political linkages, the military misuse in internal security tasks generates distrust, as in the recent case of “false positives” (United Nations News Centre online, 2010) in Colombia civil war. False positives, is a term assigned to the murder of supposed guerrilla members, motivated by rewards or the urgency to show government positive results.

The differences in the treatment of transnational organized crime in Latin America relate to the coca leaf, which is cultivated as part of the indigenous tradition in the Andean regions of Bolivia and Peru, where it is still used for medical and religious purposes. Colombia began the cultivation of coca and production of the cocaine drug by virtue of its strategic geographic position, aided by the lack of state control due to the endless civil war. This provided that the displacement of crops to Colombia in the 1980s, by the so-called “balloon effect”, which partially explains the crops eradication campaigns (Nadelmann, 1998) in the Andean region. This also has happened in other areas in the southern cone of South America in the 1990s, as Frank Mora explains that U.S. indirectly has contributed to pushing the drug trade away from the Andean region toward Brazil (Mora, 1996), Argentina and Central America. In the Mexican case, its geographical location of access to two oceans, and the large settlement of Mexican citizens in the US have facilitated the concealment of illegal exchange, to which a long history of smuggling between the two countries has been taken place, since the inception of both nations.

## **THE CONNECTION TO THE LEGAL FRAMEWORK**

There are several international agreements for addressing transnational organized crime. These efforts and those by NGO’s, have influenced the changes in national legislations. This reflects gaps and contradictions, as well as tensions confronting the States, in their sovereign necessity for the delimitation and modification of the international regulations. As for example, according to the UNODC in its 2010 report, is showed a research which took place in 187 countries worldwide. Among them, 93 countries were found to lack legislation that specifically addresses child pornography (U.N Office on Drugs and Crime, 2011). The inclusion of such

crimes in several national legislations was the “moral and ethical” impact of organizations such as the “International Centre for Missing and Exploited Children” (The International Centre for Missing & Exploited Children ). Rather, the extreme resistance to controlling the sale of light weapons in the US, highlight the NGO’s lobbying capacity in the demarcation of the limits of the law. That is the case of the National Rifle Association (NRA), who complained against any decision to infringe on the right of American citizens to keep and bear arms (Arms Control Today, 2013). These restrictions would curb violence in US schools and would limit the supply of arms to Mexico and Central America, as part of the roots of violence in both cases. The lack of legislation in the Andean areas of high migration till the end of the previous decade reduced the state’s capacity to address trafficking in persons or the so called “*coyoterismo*” (Kyle and Koslowski, 2011). This case among others, demonstrates the continuing need to incorporate new legal provisions to tackle “innovative” ways of criminal expression; sometimes little visualised or non-existent in the past decades.

*“New threats to global security are emerging, meaning that people can fall victim to organized crime in an increasing number of ways, in an increasing number of places”.* (U.N Office on Drugs and Crime, 2013)

In this sense, the traffic of species, large-scale illegal mining –with great impacts in Colombia- (Al Jazeera online, 2011), and their impact on the environment have been incorporated in the states’ legislations and on the countries’ emergency agendas. In this dynamic process of modification of standards, the state is the political unity that, ultimately, reconfigures the spaces of legality and accepts the international regimes of which it is part, affecting with their decisions outside of their State jurisdiction.

## GAPS IN THE STATE STRUCTURES

The state as a structure generates collective identity and, therefore, security. Its strength is expressed through its monopoly over legitimate violence. The processes of interaction between state and non-state actors require an established and consolidated state. Considering the exclusive role of the state in setting the boundaries of the legal and the illegal, the collapse or deterioration of this structure, generates more uncontrolled spaces, facilitates not only the illicit activity inside, but easily enables the connections with illegal spaces outside its jurisdiction. There is empirical evidence for this not only in the region but also outside of it.

In the decade of the 1990s a weak democracy following the civil war in El Salvador opened up the route for common and organized crime. The return of Salvadoran gang members deported from the US, which in turn sought asylum or refugee status in that country, was one among other reasons why these criminal gangs, so-called “*maras*”, have increased dramatically in El Salvador. These gangs have also expanded their businesses and have offered their services to the larger criminal enterprises outside their country (Dudley, 2011). In the Mexican case, it was the onslaught of the state against a consolidated political complicity of long standing, which led to the escalation of violence by the State to recover the uncontrolled spaces. At the end of the last decade, the criminal activity at the border between Ecuador and Colombia was marked by high levels of violence due to the lack of state presence. Control has been regained over this area by the affirmative action initiated by the Ecuadorian state, through social programs and the use of military (Promotion and Protection of all Human Rights, 2007).

Outside the region there are instances of the violent process of transition from a centrally planned economy to a free economy as in the former Soviet Union, led to organized crime taking

advantage of the weakness and corruption in a state. The criminal activity at its finest manifested itself in the so-called Russian mafia (Handelman, 1994). Corruption at the heart of the Russian state produced obscure figures as the famous arms dealer Viktor Bout (The Guardian, 2011), who was associated with local authorities and criminal organizations around the world, including Latin America. There is evidence of its link in the sale of arms (Schwartz, 2012) to Colombian insurgent groups in the 1990s. From this decade on, conflicts and civil wars showed an exponentially greater interconnection of the domestic with the global. After the fall of the Berlin wall, the first great inter-ethnic conflict was the process of disintegration of the former Yugoslavia (1991-2001), following the Rwandan genocide (1994), which revealed the unexpected crime and the dangers that follow when a state loses or is distracted its ability to impose order.

In any war or internal conflict, the black market has existed and will exist. In South America the Revolutionary Armed Forces of Colombia (FARC) and the Self Defense Union from Colombia (AUC) have operated under different symbiosis with the drug smugglers, arms trafficking organizations or illegal mining groups, etc. In other parts of the world organizations such as the Kosovo Liberation Army, not only embraced the cause of political autonomy, but it established several networks for trafficking in persons, for prostitution, arms trafficking and sale of drugs. These functional relationships show the degeneration of a political struggle, while becoming at the same time a means of making a profit.

By *antonomasia*, the state is the political organization with a monopoly of legitimate violence, which ultimately would allow it to exercise effective authority in legal spaces built by it. The dispute between the authority, and not the ability to define the spaces of legality, would be another way to view the mechanics of organized crime.

#### AUTHORITY IN THE CLANDESTINE WORLD AND CULTURAL INFLUENCE

Organized crime groups frequently use violence to challenge the authority of states.  
Charles Tilly (1985)

The level of violence is correlated directly with the ability or inability of the state to exercise authority. When compared for example, the security situation on the Mexican-American border the weakness of the Mexican authority compared to the capacity of the law enforcement agencies in the American sector is clear. Despite the fact that these areas are interconnected by the same illegal organizations, the violence differential reveals that ultimate expressions of this nature “begin and end” within the limits that the state can set.

This study section of the study intends to examine the functioning of the authority and the dispute around it, through the so-called mechanism of “protection and extraction”. For this purpose, it is necessary to establish whether or not there is a correlation between the political arena and the objectives of transnational organized crime groups in the region. This analysis includes the use of “terror” as an intimidating tool or as an end in itself. Occasioned by these aspects, it is necessary to link the socio-psychological perspectives linked to obedience systems in the clandestine world, in order to comprehend whether it is possible to understand the authority as ‘medium activity’ or rather ‘end activity’ of organized crime, in the Latin American region.

#### THE MECHANISM OF “PROTECTION AND EXTORTION”

Defining organized crime in terms of the conceptual pair “protection-extraction” is valid as in real terms the citizens are rarely consulted about the type and cost of the service provided

by the state (Tilly, 1985). The agents of the states are responsible for the protection of the “state clients”, as well as for the extraction from those same clients of the financial resources to meet this primary task as State. This conceptual pair highlights a visible contradiction when the state itself is the primary source of the “citizen fear”. When we substitute extortion by extraction, it becomes evident that the tax collection mechanism and the consequent obligation of protection of the citizen, work similarly in illegal spaces. When this occurs, it is evidence of the substitution of state authority by the authority of the illegal world. The criminal “assumes a (pseudo-) legal role only if the ‘state’, which is equal to ‘law’, is weak or absent” (Wilson, 2009). This phenomenon is common in Colombia, Lebanon or Philippines, where the state authority has a weak presence or even part of the national space has been given over to criminal or insurgent organizations. The “Colombian vaccine”, consists of the offering of a protection service to citizens and their properties by criminal organizations. In the case of refusal of the so-called “vaccine”, the potential customer is subjected to criminal violence by the organization that provides the service. By this means, the mechanism of extortion is given form, since the one “who is vaccinated” becomes immune to the virulence of the disease, namely violence that could be inflicted by the same vaccinator or its competitors.

This protection-extortion mechanism is widely used by the BACRIM and the insurgent group FARC, by extending this *modus operandi* towards the borders with Venezuela and Ecuador (Millet, 2002). With some differences in *modus operandi*, this is true of Mexico and almost all of Central America. In the Mexican case the violence is mostly the result of disputes between criminal organizations (Bonner, 2012). In urban areas the exercise of authority becomes more evident for the control of territorial spaces, which is common in peripheral neighborhoods as the so called “City of God” in Rio de Janeiro, which presents important challenges “not only due to its territorial extension but also due to the presence of a heavily armed criminal faction” (Journal Of International Affairs, 2012). Organized crime can be explained by the dynamics of the flow of people, money, weapons, illegal substances, undeclared goods, etc., from areas that interconnect these fluxes of operations, as is current links between the Mexican group “The Zetas” and the Colombian insurgent organization FARC, along the coastline in Central America. This phenomenon of the dispute of authority is comparable to what happens in other regions such as Afghanistan, in which whole families, for example, are dedicated to extorting from multinational companies (New York Times, 2011). The protection-extortion mechanism is reinforced by intimidation. Part of the “game of violence” is diffused through television and newspapers, which broadcast messages of intimidation and deterrence in the process of informing. In Mexico, it has become a common practice to dismember the bodies and send them to relatives of the victims as a lesson of obedience (Moore, 2012). In addition to these decadent practices, are added videos of torture and summary executions that criminal organizations upload on social networks and web sites like “Youtube.com” or “daily motion” (Cave and Somaiya, 2011).

Despite the fact that the approach followed so far, explains the functioning of the mechanism of “dispute of authority”, it does not reveal the extent to which it contributes- or not - to organized crime. Here it is important to examine the scheme of “protection-extortion” by seeking to answer two fundamental questions. The first one seeks to establish up if the dispute of authority is intended to replace the State and/or is used to facilitate the illegal activities. The second question, whose answer is highly dependent on the first, is to determine if the advertising or publicity of violence can define these organizations as “terrorists”.

## THE POTENTIAL SUBSTITUTION OF THE STATE

When criminal organizations assume the role of “protection” they do take on a pseudo-legal role. The protection-extortion is most evident in geographical areas controlled by large criminal organizations and led by highly visible leaders, such as the current Mexican drug trafficking organizations, whose name organizations are often in many cases, the places where they born on the family surnames. In these areas, the physical protection is usually added on to some welfare or social schemes, such as the sponsorship of local festivities, healthcare, housing and education programs, among others, which constitutes a major invasion of state spaces. This expression of territoriality can be confused with the pursuit of sovereignty that competes with the state (Wilson, 2009). This was the case of Pablo Escobar, the head of the Medellín Cartel, who was not only the most violent criminal that Colombia has had in its history, but at the same time the greatest philanthropist who donated large amounts of illegal money to “charities”. This foray into fields of exclusive governmental responsibility never sought to move away the State as an institution. Behind these activities, lies a certain desire for legitimacy and recognition. While it is true that several organized crime figures have - before or after their criminal notoriety - stood for popular election, they did not do so in order to contest and start a political career, but to penetrate the state’s decision-making process and corrode it. The foray into apparently socially beneficial spheres is common and has several dimensions. In fact, the suspected leaders of many major criminal groups have become celebrities of sort. Thus, for example John Gotti, one of the lords of the Italian mafia in New York, was known for his “good heart” and the fireworks display on every July 4<sup>th</sup>.

The parallel “social welfare” has been useful for organized crime because it creates real human circles of protection against the action of the authority of the State, making the dismantling of criminal gangs and the capture of ringleaders difficult. From this perspective, for example, the use of military force to restore the authority and the rule of law in several slums in Brazil has been part of the solution for tackling powerful organizations such as the “Red Command and First Capital Command” (Sullivan, 2002). The same happens in Honduras, El Salvador and Guatemala, countries that top the list of the highest rates of homicide in the world. According to the Intentional homicide count and rate per 100,000 population, there are the data of the most violence cities in Central America, by 2009: San Salvador- El Salvador (94.9), Tegucigalpa-Honduras (72.5), and Guatemala-Guatemala City (118,6) (UNODC, 2010).

State weakness opens up the space for organized crime to infiltrate public administration, for facilitating corruption and the destabilization of democracy. Thus, organized crime does not have the objective of the “taking of the State or its replacement”, despite the effects that may cause or links that could be established. Penetration into state institutions is an intermediate objective that facilitates criminal activity, and whose rationale is economic profitability (Jacob, 2011).

The non-political connections as final objective, do not prevent extremist organizations from being involved in the criminal world, either through cooperation with criminal networks or by themselves. Since the mid-1980s, the insurgent group FARC has provided protection services to drug traffickers. At the beginning of the 1990s, it took advantage of the weakening of the Colombian cartels, and directly took over this illicit business. The ELN group in Colombia and the Maoist group Shining Path in Peru, despite the infighting, supported criminal activity to insure finances. Outside Latin America, these processes can be exemplified by the LTTE in Sri Lanka or the United WA State Army in Myanmar (Steinberg, 2000), among others. These processes of coexistence and degeneration into actual criminal factions (Staniland, 2012), partly follow the

same logic when legal agents are tempted to enlarge criminal organizations, as it is the case of the formation process of the armed group the Zetas in Mexico, which has its roots in the Mexican Special Forces (Dudley, 2011).

When the criminal organizations come under increasing state pressure, they diversify their modus operandi, return to the underworld or migrate to other geographical areas, which have been described as the balloon effect. Despite this, they can still use the violence against the State or other actors. Instead, groups classified as terrorists or insurgents have to face the power of the state or postpone direct confrontation until they acquire new capabilities or simply succumb because of their inability to achieve their objectives. It is possible to affirm that these types of violent political organizations seek to supplant the monopoly of violence, creating conditions to take control of the state and assume its authority. This does not happen with criminal organizations, which exploit the weaknesses of the state for profit and dispute the authority as an instrumental or a tool element. The similarity between criminal organizations and insurgents or terrorists is that both operate outside the law and their linkages go beyond borders.

In this sense for example, the term “narcoterrorism”-pointed out at the beginning of the present study - lacks international agreement in its meaning. What it is quietly clear is that terrorist organizations have a political purpose and they enter into criminal activities to support its actions and finance its operations. The common distinction between terrorist and criminal organizations is really a continuum, with purely financial motives at one extreme and purely political or ideological objective at the other. However, the multiplicity of heinous acts, as the massacre of illegal migrants in Tamaulipas (Arana, 2005) in 2010 or the persistent killing of government officials in Mexico, by criminal organizations, are deemed as destabilizing factors and as posing a challenge to authority. In this sense, it is evidenced the existence of a very thin conceptual line that makes difficult to label the final aim of these violent organizations. This ambiguity does not contribute to confront every phenomenon in particular; rather its treatment is numbed by the political implications. The use of the expression of terrorist or criminal does not alter the nature of the ultimate goal. It is entirely possible for illegal armed groups to exploit drugs, smuggling, and extortion without becoming motivated by these activities.

“Resources do not speak for themselves: simply engaging in criminality does not mean that an armed group exists to be criminal.” (Staniland, 2012)

## **THE SOCIAL-PSYCHOLOGICAL PERSPECTIVE**

The defiance of authority may be related to the desire for public recognition, as stated in the previous section. The substantial profits they make cannot even be spent, which shows that the “psychological enjoyment” of defying authority is more desirable than economic advantage. The “Chapo Guzman (ABC News online, 2013)” is a living legend who fits this mechanism - he was certainly the most wanted man in Mexico and one of the wealthiest. This criminal lord was ranked from 2008 to 2012 on Forbes’ list of the 100 most powerful and influential celebrities in the world. The “psychological enjoyment” can be compared to the precepts of “Maslow’s Theory of motivation and hierarchy of human needs” which refers to the so-called intangible assets whose value is higher than the economic value.

The psychological enjoyment includes the exercise of authority at various levels of the criminal organizations. However, it is important to point out that enjoyment is not based on the size of the organization. It is basically focused on the psychological perspective being able to break the law and remain immune. The size of the organization is functional to the activity, as is



currently happening in the field of cyber-crime, where a small bunch of individuals are required (Treverton, 2009). It should be noted that most of modern organized crimes are very similar to the old. The most significant transformation from the streets to cyberspace has enlarged the territory of organized groups, which are able to operate in less governance area, a transnational stage. In Latin America these practices have some impact miles away. For example, in Colombia online crimes through computer fraud schemes have caused losses for around \$1.4 million in US (Foltz, 2008).

Another important factor is the role of the media in the expansion of criminal violence and its impact on the social values. Latin American media coverage of criminality and TV series on the wealthy lifestyles of the so-called “capos” has idealized them. In addition, it has diminished the level of social sensitivity related with bloody facts.

## **OBEDIENCE IN THE UNDERGROUND WORLD AND THE SPIRALS OF VIOLENCE**

The defiance of authority is an expression directed towards the State authority and other illegal organizations. This competition –among criminal organizations- for functional spaces is taking place in Mexico, on much the same lines as what happened in Colombia for more than two decades (NACLA, 1997), and with regard to Salvadoran criminal gangs, such as MS-13 and MS-18, catalogued as transnational due to their links (Dudley, 2011). This also reinforces the exercise of authority within the organization itself, calling the obedience of its members. This authority, on the outside and the inside, is asserted by the use of violence either to fix disagreements or for maintaining discipline. The high homicide rate in Mexico is a product of the clashes between criminal organizations and the result of an indiscriminate spread of fear or terror. Violence is generated directly or by hiring the services of a third party, as shown in the connections that are established by gangs and drug traffickers in Central America.

Therefore, transnational organized crime can be understood as a continuum of local organized violence. The higher the level of violence in a society, the more it is interpreted as the supremacy of the illegal authority over the state. However, there is not a single rule that can be applied. Therefore, in Mexico the number of violent deaths has increased following the attempt of the state to regain control of the spaces that it is legally entitled to. This has resulted in narrowing of the illicit spaces, and increasing disputes over its use, and the consequent increase in local violence. It is also deduced that the level of violence is inter-related with the functionality of the geographical space. For example, Ecuador was labeled as an “island of peace” during the 90s, despite being bordered by two major producers of drugs: Colombia and Peru. The implementation of “Plan Colombia” created a new dynamic in the Andean region and led to the redeployment of part of criminal activities to Ecuador territory, because its functionality for “refuge and supply” to criminal organizations and guerrillas. To this was added the negative effect when this country adopted the American currency (Feb 2000), which led to money laundering and the smuggling of subsidized goods.

It can be partially concluded that the spirals in local violence are a result of the incidence of organized criminal activity in a given space, as well as by the dispute of authority, against the State and within the criminal world. In this sense the criminal act cannot only be seen as the exclusive acceptance of the risk of breaking the law for purposes of an economic return in the short term, but it is complemented by the psychological enjoyment of “power” as a higher need to be satisfied.

## RECOMMENDATIONS

### FINDINGS AND THEORETICAL CORRELATIONS

Throughout the study the incidence of crime, not only in the Latin American region but also in many parts of world, has been explained on the basis of structural and constructivism approaches. From a structural perspective it has been transversally addressed as being the result of poverty, social inequality and internal instability. However as per constructivism organized crime has been interpreted in terms of political tendencies, the dynamism of “globalization” and the role of the state, with special reference to the process of setting up of the nation-State in Latin America. The constructivism approach questions structural factors by deconstructing the relationship between criminal activity, criminal law and the capability to exercise the authority. These aspects are highlighted by correlating the statistics of criminal activity with the impunity rates in Latin America and the U.S. For example, Mexican prosecutors manage to obtain convictions in less than five per cent of cases involving persons arrested for drug trafficking. By comparison, the conviction rate in the United States for similar crimes is over 90 per cent (Bonner, 2012).

It is also possible to prove this point by comparing the violence levels in cities that are neighbors on the border, such as Ciudad Juarez, in Mexico and El Paso, in the US (Del Bosque, 2009). A comparison with socio-economic indicators could also explain the phenomenon of organized crime by underlining the deficiencies in the structural factors. But beyond the limitations of each theoretical approach, it must also be recognized that the State plays a crucial role, as it is responsible for delimiting the space of legality and for being the face of authority. All this despite the influence of the globalization and its limitations or constraints. However, the Western concept of the image of almighty state belies the phenomenon that “power” only makes sense under specific situations, which is an important factor to take in account for formulation of public policies. In this sense, for example, the militarization of the domestic security agenda in several Latin American countries has been thought of as the panacea to the problem of organized crime. On the contrary, it has generated more violence instead of vanquishing crime. This is not to deny the potential utility of armed forces in tasks that traditionally are for police organizations or other national security agencies. In this regard, the unlimited capacity attributed to the State is challenged by the real impossibility of exercising sovereignty in absolute terms (Wilson, 2009). When criminal organizations violate the law or defy authority, it is seen as an expression of “power” in a non-conventional dimension, which may not be fought by states based on a paradigm on interstate issues.

It is important to note that security has a political dimension as well; therefore, the treatment of “organized crime” will always be tinged with political “constructions” instead of tangible facts. Moreover, various self-interests are also key factor that constrains domestic and international efforts to tackle the organized crime.

### PROPOSED THEORETICAL MODEL

The proposed model offers an alternative understanding of transnational organized crime, on the basis of structural elements. The political, economic and social factors included in the model enable an understanding of the dynamics of crime beyond the current situation or junctures, a particular geographical region, or an illicit or political position. This approach is intended to be a holistic reference in the conceptualization of public policy. In this sense,

the model shows gaps where States should set minimum commitments, thus emphasizing the importance of international cooperation as an essential tool to address this phenomenon.

Given all the variables, it is still possible to identify two critical pillars to explain the dynamics of organized crime and its level of trans-nationalization, not only in Latin American but in a general perspective. The first is the “**financial matrix**”, which shows the blurred area of interaction between the legal and illegal economy. The second is the “**circulation of power**”, which is the result of tensions produced by the exercise of state authority over society and the diversity of non-state actors, including criminal organizations. The aforementioned factors converge in the “**market**”, as swap space not only for economic exchange but also, for waves of violence. In theory, these activities are regulated and controlled by the state, not only as the builder of the main element of legality, but also for its monopoly over the exercise of legitimate violence.

This theoretical proposal below is complemented by a concept map, which broadly shows the interrelation of the factors to be analyzed.

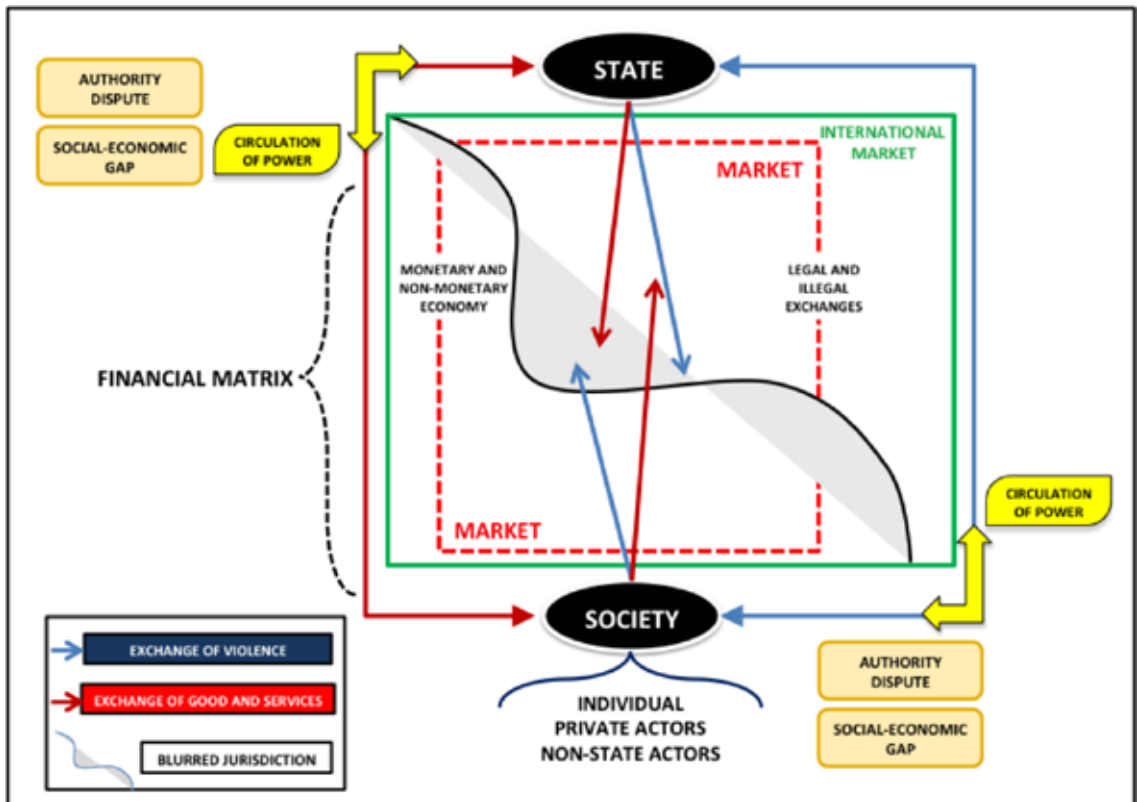


Fig. 2: Proposed Theoretical Model

**FIRST PILLAR: FINANCIAL MATRIX**

The modern financial system allows the interaction of financial resources between legal and illegal economic activities. These financial assets include physical or virtual money, investments, and properties, among others. The control over “free money flows” in the international system, is reduced in practice. The imposition of mechanisms of control and certification been rejected by some players as an expression of neo-colonialism. Using the states polices to interpret the facts, it

is possible to evaluate its ability to interfere with the commitment of the international community in the treatment of common problems. Despite the noted weaknesses, the “financial matrix” is a means of reducing the capacity of organized crime activity, because the legal and illegal worlds converge in this matrix, regardless of the terms in which the origin of this resource is politically qualified. In addition, the current possibility of monitoring financial transactions is much higher than before the digital era, if well employed.

The market is the point of confluence of all transactions, and can be defined as a space of encounter of who demands and who offers goods or services. This applies even to violence services that result from extortion-protection mechanisms that have been referred to as part of the second pillar of this proposal. There is no illegal market, but there are illegal transactions. It is important to highlight that all illicit activity at some point should be converted into “money”. If we follow “the ball thread” any transaction will end up in a kind of financial resource that finally enters the legal system and economy. It is not unknown that the same illicit goods are used as means of exchange. However, the non-monetary systems too are no exception to that because at some point they might become part of the monetary economy. Thus for example drugs as a method of payment has driven the so-called domestic micro-consumption, as it for example is more evident in Mexico, and Brazil (U.N Office on Drugs and Crime, 2011). The phenomenon of retail consumption, resulting from the sale of drugs in the local market, is carried out by organizations that provide transportation and storage; they receive as payment a percentage of the drug under their surveillance., Weapons are paid for with drugs, works of art with diamonds, etc., are a common practice in various regions of the world. However, much of the illegal money ends in the hands of figureheads, transformed into cash or deposited in the banking system.

The major obstacle to international cooperation to prevent “money laundering” comes from interests generated by domestic agendas. In this respect, the labelling of the source of funds as belonging to terrorist or insurgent organizations, or subject to “degeneration processes” should be avoided. The effort should be centered on the determination of technical standards to establish the legality of the flows of money to reduce the margin for maneuver for organized crime. It is noteworthy that money laundering ranges from small amounts to millions through different partners (O’Neill, 2009). Hence, it becomes impossible to completely eliminate these illegal practices mainly because of non-monetary systems that will always be an alternative.

*“The fact that money once laundered is indistinguishable blurs the distinction between the licit and illicit economies and raises intriguing questions about how governments should deal with such revenues.”* (Inkster and Comolli, 2012)

The financial matrix is fundamental to the addressing of the phenomenon; however, it should not be considered as a panacea.

## **SECOND PILLAR: THE CIRCULATION OF POWER**

The disputes over authority and violent transactions ultimately take place in the “market”. Any violent action has a “cost”, which makes the market the ultimate point of the demand for them. The operation of protection-extortion schemes is somewhat transactional. However, there will be not enough demand for a service, which facilitates or encourages the proliferation of these practices in societies. These are facilitated by two elements. The first is the deterioration of state authority and the consequent supremacy of the clandestine authority. The second are the structural gaps of a socio-economic nature, which constitute the stimulus of the illegal activity that, are reinforced by the weakness of the first. This theoretical parallel is exemplified by criminal

gangs, who use intimidation to ensure compliance with their “mandates” in their “territories”, in palpable competition with the state. These disputes over authority generate violence and conflict with the state as well as between illegal organizations.

In spite of the fact that transnational organized crime is an expression that conceptually involves a connection between areas of different jurisdiction; its activities occur under spaces covered by a single legal regime. The phenomenon of violence ultimately impacts local conditions. There is no “transnational space” by itself because it covers up the nature of the transaction or the exchange process. Regional organizations and INTERPOL have done much to facilitate information sharing and joint operations, but, in the end, each criminal must be prosecuted in a national criminal justice system. Therefore, the place to initiate responses against organized crime should be at the domestic level. Some such schemes are the “Police Pacification Units” in Brazil or the “zero tolerance” policies developed in New York, which led to a significant reduction in the crime rate in that city (Davis, 2013). Although these policies can be explained from a structuralize approach (poverty and crime) which itself contains innovative elements to deal with insecurity, and is focused on the recovery of the spaces of authority. In this sense, a simplistic relation between cause-effect is recognized, but at the same time it is shown that the abandonment of public spaces by states generates conditions for gang development and criminal organization.

It is important to reaffirm that criminal organizations are spawned in areas with high levels of social disorganization and rarely seek to fill in the gaps of state action, but whenever they do something social, it is not intended for political vindication. Thus, the urban and rural areas absent of authority are used as “circles of protection”. The level of social deterioration may indirectly be seen by the proliferation of private security services (legal and illegal) following the inability of the state to provide them. The exponential growth of these private initiatives in Latin America is dramatic (Ungar, 2007), and conceptually similar to the so-called “private armies” that provide security services to transnational corporations in Africa, Iraq, or Afghanistan. It is notable that social disorganization also facilitates violent political actions.

## CONCLUSION

This present study has focused on the phenomena of violence in Latin America while correlating and applying their mechanics to other areas around the world. The present study passes through the spatial and time-line references, by identifying intrinsic and extrinsic factors that have impacted the construction of a reality influenced by different political positions. After having examined criminal gangs in Central America, armed groups in the Brazilian “favelas”, Colombian criminal gangs, and the all-powerful Mexican criminal structures, it is possible to affirm that there are common elements that explain the “transnational organized crime” from a more conceptual dimension, rather than exclusively by taking approaches based on historical, political, socio-economic origins or premises of social psychology. All these fields were addressed transversely in the present study, offering complementary points of view. For example, political trends were studied for the discussing drug wars and security processes. The historical vision included aspects such as the phenomenon of globalization and the formation process of state units in the Latin American region.

The socio-economic causes were approached as part of social degradation processes and the state’s failure to control all national spaces. The binomial analysis of authority-legality aspect is linked to the theory of power; for this reason, the political analysis was complemented by

the socio-psychological perspective of the disputes over authority in the underground world. It is worth mentioning that the analysis also focused on cyberspace and the high global financial interconnectedness. Although these dynamics do not change the nature of the phenomenon, it has been recognized that global communications and capacity of transportation of international cargo have generated unique conditions for the functioning of organized crime.

The breaking down of the stated problem has allowed the identification of the financial matrix as the common factor in transnational organized crime, which makes it one of the pillars of the fight against this scourge. The second pillar is the “circulation of power”, which recognizes that the problem is also one of structural order, where a social degradation process influences the rise of organized criminal activities. This aspect requires that authority spaces must be filled by state institutions and their law enforcement agencies. At the same time, this requires the broad cooperation and international commitment of states, as sovereign entities. The proposed theoretical model is essentially transactional since it uses the “market” as the point of interaction for economic exchanges and violence.

Any approach to treat transnational organized crime has to be comprehensive, which means that it must be tackled concurrently in the political, economic and social perspectives. However, at the same time any strategy conceptualized must be integrative, which would help to establish a cooperative coordination framework among countries, and between states and international bodies or institutions. Also, it has to be understood, that even a wider comprehensive and integrative strategy, it cannot be a “panacea” or final solution. For instance, money laundering will always be a part of the problem as explained in the economic matrix.

Last but not the least, any solution has to be linked from global down to local responses, which inevitably require a strong commitment from the state to impose the law and authority locally before extending the provisions of law to other ungoverned areas such as the cyber space.

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