

Mexico, Armed Clashes between the Government and the Sinaloa Drug Cartel

INTRODUCTORY TEXT: The tensions between the Mexican Government and the largest drug cartels are steadily increasing. This case study analyses an incident that occurred in October 2019 and involved an escalation of violence between the Mexican armed forces and the Sinaloa Cartel in the city of Culiacán, following the capture of one of the Cartel leaders. The case study focuses on the interplay between the conduct of hostilities and the law enforcement paradigms.

Case prepared by Virginia Raffaeli, LL.M. student at the Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli and Mr. Pavle Kilibarda, research assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. MEXICO'S PRESIDENT DEFENDS GOVERNMENT RESPONSE TO DRUG CARTEL MAYHEM (17 OCTOBER 2019)

[**Source:** The New York Times, Mexico's President Defends Government Response to Drug Cartel Mayhem, 17 October 2019, available at <https://www.nytimes.com/2019/10/17/world/americas/culiacan-mexico-chapo.html>]

[1] President Andrés Manuel López Obrador of Mexico on Friday defended the country's security forces for capturing — and then releasing — a son of the infamous drug lord El Chapo.

[2] He said their actions had saved innocent civilians after a cartel unleashed mayhem in a Mexican city where the son had been seized.

[3] Mr. López Obrador spoke a day after well-armed cartel gunmen paralyzed the northwestern city of Culiacán, spraying automatic gunfire in broad daylight in response to the arrest of Ovidio Guzmán López, one of the children of El Chapo, whose real name is Joaquín Guzmán Loera. The son was later released by the outgunned soldiers.

[...]

[4] The scope of the violence on Thursday, and the decision to release the son, was stunning even in Mexico, where life is frequently punctuated by drug-related violence and impunity by cartel fighters. [...]

[...]

[5] The violence began shortly after 3:30 p.m. in Culiacán, the capital of Sinaloa State, when a patrol of 30 soldiers came under attack by individuals in a home in the neighborhood of Tres Ríos, according to government officials.

[6] After taking control of the home, the security forces encountered and detained four men — among them Mr. Guzmán López, a leader in the Sinaloa cartel. Cartel gunmen then surrounded the home and engaged the armed forces, the officials said. But they ultimately decided to release him.

[7] Later, the cartel deployed fighters throughout the neighborhood and began burning vehicles and blockading streets throughout the city.

[8] Gunfire continued into Thursday night, as soldiers and cartel fighters battled in the streets. In its brief statement, the government said it had opted to suspend its operation, but did not elaborate on what exactly that meant. Later, it became clear through local media that the government forces had indeed released Mr. Guzmán López, who returned to the cartel.

[9] The echo of gunfire sent citizens fleeing for safety as the assault began, while others sat trapped in their vehicles, capturing footage on cellphone cameras. The harrowing videos, uploaded onto social media, showed heavily armed men in ski masks blocking streets and halting traffic while plumes of black smoke filled the sky.

[10] Others showed the powerful weaponry wielded by the traffickers, including mounted .50-caliber guns.

[...]

[11] “In my 21 years of covering crime at the heart of drug world, this has been the worst shootout and the most horrible situation I have ever encountered,” said Ernesto Martínez, a local crime reporter who was caught in the middle of a gun battle only a few feet away from his vehicle.

[12] Mr. Martínez had gone to report on a separate shooting when he ran into an army vehicle, which had stopped a car with individuals carrying machine guns. Suddenly, he said, the gunfire started and the soldiers yelled: “Everybody down, shootout!”

[13] Mr. Martínez said he then noticed a white vehicle with masked men shooting at the soldiers. [...]

[...]

[14] The gunfight lasted for 20 minutes before another one erupted, he said. The second shootout lasted for almost four hours, he said, and continued late into Thursday.

[15] Mr. Martínez said most of the confrontations took place in Tres Ríos, an upscale commercial and business district, but he said chaos reigned throughout the city with burned vehicles and houses and roadblocks in different locations, and gunshots being fired at government buildings, including the state attorney's office.

[...]

[16] Mexico is facing its deadliest year since the country began recording homicide statistics more than 20 years ago. Warfare between rival cartels fighting for control of the drug trade to the United States has turned parts of the country into some of the deadliest places on earth.

[17] The government has continued to target top cartel leaders in its now 13-year war on drugs. [...]

[18] It is not unheard-of for cartel assassins to stage brazen attacks in broad daylight, often in response to an arrest of a high-ranking member or to target their enemies. [...]

[19] Rumors quickly began circulating on social media late Thursday that the gunfights were related to the Sinaloa cartel, which remains powerful locally.

[20] The elder Mr. Guzmán was convicted in February in the United States on drug, murder and money laundering charges, and was sentenced to life in prison.

[21] In February, the Justice Department charged two of his sons, Joaquín Guzmán López and Ovidio Guzmán López, with one count each of conspiracy to “knowingly, intentionally, and willfully” distribute cocaine, methamphetamine and marijuana for import into the United States.

[...]

[22] Some believe the cartel's show of force might reflect a schism within the [Sinaloa] group, one that deepened with the arrest of El Chapo. Since then, various factions have been jockeying for control and some suspected that it might have been one of those factions that engaged in Thursday's mayhem.

[...]

B. AFTER SOLDIERS SURRENDER EL CHAPO'S SON, A SHOCKED MEXICAN CITY SIGHS WITH RELIEF (20 OCTOBER 2019)

[Source: The New York Times, After Soldiers Surrender El Chapo's Son, a Shocked Mexican City Sighs with Relief, 20 October 2019, available at <https://www.nytimes.com/2019/10/20/world/americas/culiacan-mexico-chapo-son.html>]

[...]

[1] [...] Officials say at least 14 people died during the shootouts, but neither state nor federal authorities were able to confirm by Sunday that 14 dead was the final toll.

[...]

[2] By Saturday morning, life in the city seemed to slowly return to normal. Shattered glass was replaced, bodies had been collected from the streets, and the debris of burned cars, tires and spent bullets was cleared away.

[3] Still, traces of the violence were just about everywhere. Bullet holes pocked government buildings, restaurants and homes, and countless residents carried with them the trauma of what they'd lived.

[4] Noé Isauro Beltrán, 39, had been in the middle of an ordinary day at the auto repair shop where he works when cartel gunmen opened fire at a crossing of two main thoroughfares. Mr. Beltrán was reportedly trying to close the shop's iron shutters, to protect himself and others inside, when a stray bullet struck him in the stomach, killing him.

[...]

[5] On Saturday afternoon, a large military and state police convoy patrolled the city. Hours later, hundreds of military special forces had arrived to set up check points.

[6] Cristóbal Castañeda, the head of the security for the state, confirmed that local forces had "no knowledge

of” and did not take part in the military operation to capture Mr. Guzmán López. They learned about the target — and fiasco — hours after the drug lord had been released.

[7] “The consequences of that I think are obvious,” said Mr. Castañeda. “We did what we could with the information we had, which was simply to react to the multiple reports of shootouts and try to protect the citizens to the best of our abilities.”

[...]

C. MEXICO CARTELS: WHICH ARE THE BIGGEST AND THE MOST POWERFUL? (24 OCT 2019)

[Source: BBC, Mexico Cartels: Which are the Biggest and the Most Powerful?, 24 October 2019, available at <https://www.bbc.com/news/world-latin-america-40480405>]

[...]

THE SINALOA CARTEL

[...] **Territory:** Much of the north-west.

[1] The US government has described the Sinaloa Cartel as one of the largest drug-trafficking organisations in the world.

[2] Founded in the late 1980s, it was for many years headed by the notorious drug lord Joaquín "El Chapo" Guzmán. [...]

[...]

[3] The Sinaloa became the biggest supplier of illegal drugs to the US during Guzmán's long reign as leader, officials say.

[4] The cartel kidnapped, tortured and slaughtered members of rival criminal gangs. It also had access to a huge arsenal of weapons, including a rocket-propelled grenade launcher [...].

[5] But in July 2019, the drug lord was sentenced to life in prison following one of the most high-profile trials in recent US history.

[...]

[6] His jailing led to an increase of violence in the region as other groups sought to take advantage. Despite this, the Sinaloa Cartel remains hugely powerful. It still dominates north-west Mexico and is reported to have a presence in cities ranging from Buenos Aires to New York.

[7] [...] With its long-time leader now behind bars, the cartel is said to be partially controlled by Mr Guzmán's son, Ovidio Guzmán Lopez.

[8] When the younger Guzmán was arrested by the security forces in October 2019, Sinaloa Cartel gunmen were quick to demonstrate the group's serious military might.

[9] They fought street battles with the army in broad daylight, set fire to vehicles, and even staged a prison break before their leader was eventually freed. It was a sign the group remains an immensely powerful force.

[...]

Discussion

I. Classification of the situation and applicable law

1.(Document A, paras [16]-[17]; Document C, paras [1]-[5])

a. How would you classify the situation in Mexico? Could the “war on drugs” amount to an armed conflict? Who would the parties to the conflict be?

b. What criteria would have to be fulfilled in order to establish that there was an armed conflict between the Mexican Government and the Sinaloa Cartel? Can a drug cartel become a party to an armed conflict? (**See** ICRC Casebook, Mexico, The “War on Drugs”; GC I-IV, Art 3)

c. Is a drug cartel capable of implementing IHL? (**See** ICRC Casebook, Mexico, The “War on Drugs”; GC I-IV, Art 3)

d. Does the intensity of the violence in Culiacán in October 2019 satisfy the requirements for the existence of a non-international armed conflict (NIAC)? Could one instance of intense violence suffice for a NIAC? And for international armed conflicts (IACs)? Could the weapons used by one party or the other also weigh on this assessment? (See ICTY, The Prosecutor v. Tadić, Appeals Chamber, Jurisdiction, para. 70; ICTY, The Prosecutor v. Ramush Haradinaj et al, Trial Chamber (2008), paras 50-60; Inter-American Commission on Human Rights, Tablada, paras 154-156; GC I-IV, Arts 2 and 3)

e. What level of organisation must an armed group meet in order to be considered a party to a NIAC? Must it be as well-organised as governmental forces? Who has to be organized: the party to the NIAC or its armed forces? Does the Sinaloa Cartel meet the organisational requirement for a NIAC? Assuming that the Cartel is indeed involved in an armed conflict against the Mexican Government, what are the implications of the capture of the group's leader, "El Chapo", for its organisation? Does a NIAC stop if a group becomes "disorganised"? Why is organisation important for IHL? (See ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 70; ICTY, *The Prosecutor v. Ramush Haradinaj et al*, Trial Chamber (2008), paras 50-60)

f. Do other legal regimes (also) apply to the situation in Culiacán? Is IHRL applicable to the actions of the Mexican armed forces in Culiacán? Is the application of IHL or IHRL mutually exclusive? Or can they apply simultaneously to the same incident? What about domestic law? (See ICRC Casebook, ICJ/Israel, *Separation Wall/Security Fence in the Occupied Palestinian Territory*)

II. Use of Force: Conduct of Hostilities and Law Enforcement

2.

a. What is the difference between the law enforcement and the conduct of hostilities paradigms? How are the rules governing the use of force in law enforcement operations different from the ones governing hostilities? Does the existence of an armed conflict exclude law enforcement? Does IHL provide for such rules? Is this not rather an IHRL issue? (See ICRC, *Expert Meeting: The Use of Force in Armed Conflicts*)

b. How do you determine whether the conduct of hostilities paradigm or the law enforcement paradigm applies to a particular situation involving the use of force? Does it matter whether the military or the police use lethal force? Does the territory in which the use of lethal force occurred matter? What about the status/function of the person who is targeted? If the target is a civilian, does IHRL always apply except if they were directly participating in hostilities at the time of the attack?

3. (*Document A, paras [6]-[10]*)

a. Do you think IHL could be applicable to the use of force by the Mexican armed forces against the cartel members? Or were Mexican armed forces engaged in a law enforcement operation? Do different legal standards apply to same armed forces of a State depending on whether they engage in hostilities or law enforcement operations? How can one determine whether they conducted one or the other?

b. And what about the Mexican police who also intervened? Could they be engaging in hostilities or do they apply law enforcement rules by default?

4. (Document A, paras [6]-[10]; Document B, paras [2]-[4])

a. Is there a different standard on when it is permissible to resort to lethal force between conduct of hostilities and law enforcement operations? What is the relationship between the concept of imminent threat to human life and that of direct participation in hostilities? Does IHL require graduated use of force?

b. What obligations does the conduct of hostilities paradigm place on the party using lethal force before such force can be used? How do these requirements differ from those under the law enforcement paradigm? May the armed forces only target civilians directly participating in hostilities in case of imminent threat to human life and only after exhausting less lethal means? What about combatants/fighters? Does it matter if the armed conflict in question is international or non-international?

c. If IHRL governed the operation, could the Mexican armed forces have used lethal force on the basis that the actions of the Cartel members constituted “an actual and imminent threat to human life”? Could a threat to the life of soldiers suffice under the law enforcement paradigm to justify a use of lethal or potentially lethal force? (See ICRC, Interpretive Guidance on Direct Participation in Hostilities)

5. If IHL applied, were all members of the cartel, was every drug dealer, or were only members of the armed group fighting for the cartel legitimate targets of attacks? Is such a distinction realistic in our case? (See ICRC, Interpretive Guidance on Direct Participation in Hostilities, p. 32)

6. May persons who are legitimate targets such as combatants, civilians directly participating in hostilities and members of an armed group with a continuous fighting function be targeted under IHL under the conduct of hostilities paradigm? Is there a specific threshold which their actions would have to cross in order for them to amount to “threats to human life” under the IHRL law enforcement paradigm? (See ICRC, Interpretive Guidance on Direct Participation in Hostilities, Chapter IX)

7. (Document A, paras [1], [3], [6]; Document C, paras [7]-[8]) If IHL were indeed applicable to the situation, would Ovidio Guzmán López, *El Chapo's son*, be considered a legitimate target of attack? Does IHL oblige belligerent parties to try and capture rather than kill enemy combatants/fighters?

8. (Document A, paras [1]-[3]) Assuming that there was a NIAC, was the Cartel's retaliatory attack against security forces because of the arrest/capture of Ovidio Guzmán López a violation of IHL? Would it matter if only State forces and not civilians had been targeted in the attack? May the attack be considered a reprisal under IHL? (CIHL Rules 145 and 146)

9. (Document A, paras [1]-[3]) Should the capture of Ovidio Guzmán López by State forces be considered in light of IHL or IHRL? Does IHL provide an adequate legal basis, grounds and safeguards for detaining individuals in non-international armed conflicts? Does it matter whether the detainee is a civilian or a fighter?

(See GC I-IV, Art. 3; P II, Art. 4, 5 and 6; United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments), Document B, paras 9-17)

10. *(Document A, paras [1]-[3]) Was it permissible under IHL to release Ovidio Guzmán López? What about IHRL? Either in peacetime or in an armed conflict, may States release dangerous criminals from custody if keeping them poses a security risk?*

III. Protection of Civilians

11. *(Document A, para. [2]; [9]; [11]-[12]; [15])*

a. Is the choice by the Mexican Government to suspend the operation on the basis of the need to protect civilian lives compliant with IHL? Is this actually required by IHL? And by IHRL? Were the Mexican armed forces under a duty to direct the violence away from the populated areas in the city?

b. What obligations did the Mexican Government owe the civilians in Culiacán? And the Cartel members shooting at the soldiers? Would these potential obligations be the same under IHL and IHRL?

12. *(Document B, paras [1]; [4])*

a. Would the responsibility for the alleged 14 dead civilians be the same if these were killed by the Government forces or by the members of the Cartel? Could these deaths be violations of the rules under IHL and/or those under IHRL? What criteria would have to be fulfilled under one or the other for these deaths to be lawful?

b. And what about the damage to civilian buildings and infrastructure? Are there specific conduct of hostilities rules governing this? And are there any under law enforcement?

13. *(Document B, paras [5]-[7])*

a. Are the obligations owed by the Mexican police and the Mexican armed forces towards the members of the Cartel the same?

b. Do IHL or IHRL contain any specific rules concerning whether and how the police in Culiacán should have been involved in the “military operation” against the Sinaloa Cartel? May police forces take part in hostilities as defined under IHL?