

Mexico, Recapture of Ovidio Guzmán, One of the Leaders of the Sinaloa Cartel

This case analyses the operation and subsequent events that occurred in January 2023 when the Mexican Armed Forces recaptured Mr. Ovidio Guzmán, one of the leaders of the Sinaloa Cartel, who had been released in 2019. It further examines the escalating tensions between the Mexican Government and drug cartels, which were initially discussed in the previous case Mexico, Armed Clashes between the Government and the Sinaloa Drug Cartel.

Acknowledgments

Case prepared by Sara María Astrálaga Cediel, LLM student at Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli (University of Geneva) and Professor Julia Grignon (Laval University).

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. SINALOA CARTEL LAUNCHES VIOLENT RESPONSE AS MEXICO RECAPTURES EL CHAPO'S SON

[Source: The Guardian News, "Sinaloa cartel launches violent response as Mexico recaptures El Chapo's son", January 6, 2023; available at <https://www.theguardian.com/world/2023/jan/05/mexican-authorities-recapture-drug-lord-el-chapo-son>]

[1] Ovidio Guzmán's arrest on Thursday prompted heavy fighting from cartel gunmen in the city of Culiacán

[2] Mexican authorities have captured Ovidio Guzmán, a son of incarcerated drugs kingpin Joaquín "El Chapo" Guzmán, prompting a wave of retaliatory attacks from cartel gunmen in the northern city of Culiacán.

[3] After a night of violence, gunmen exchanged fire with security forces, blocking roads with burning vehicles

and shooting at army helicopters and police aeroplanes bringing reinforcements to the city.

[4] According to one resident, heavy fighting raged for hours after Guzmán – a key figure in the Sinaloa cartel since the arrest of his father – was arrested in the city early on Thursday.

[5] “They caught him at about 4am, and since then the shooting hasn’t stopped. It’s been a real mess – they’re shooting up in the air trying to bring down the [police] helicopters. The whole town is a mess,” the resident said.

[6] Cartel members also reportedly seized a Red Cross ambulance, took medical personnel from hospitals to attend their wounded comrades, threatened reporters and seized press vehicles.

[7] All major roads into the city were blocked with burning vehicles, and gunmen attacked a military air base and Culiacán international airport, where a passenger jet was hit by a bullet as it was preparing to take off, according to the airline Aeromexico.

[8] The Sinaloa state government said three members of the security forces had been killed in the clashes.

[9] “We continue to work on controlling the situation,” said Cristobal Castaneda, Sinaloa’s public security chief.

[10] The defense secretary, Luís Cresencio Sandoval, told reporters that Guzmán had been transferred to the Mexican capital after his capture by members of the army and national guard. He described the arrest as a “decisive blow against the Pacific cartel”, using another name for the powerful crime faction.

[11] The exact circumstances of the arrest were unclear: Sandoval said it followed six months of surveillance, but also appeared to suggest there was an element of chance involved. “When the armed forces set up a roadblock to stop several vehicles with improvised armour, [cartel] gunmen opened fire. Security forces recognized Ovidio Guzmán, who they managed to detain,” he said.

[12] Guzmán, 32, was previously detained briefly in Culiacán in 2019, but quickly released after a violent response from the gang in an episode which became a major embarrassment for the government of President Andrés Manuel López Obrador.

[...]

[13] For Tomás Guevara, a security expert at the Autonomous University of Sinaloa, Guzmán’s arrest helps save face for Mexican law enforcement following the humiliation of having to let El Chapo’s son go in 2019.

[14] “The detention of Ovidio is finally the culmination of something that was planned three years ago,” he

said.

[...]

[15] On Thursday morning, security forces were attempting to contain a violent reaction to the arrest in the Culiacán area by Guzmán's associates.

[16] Local government urged people to stay indoors and said schools and administrative offices were closed due to the violence. Unverified videos on social media appeared to show heavy gunfire, including from helicopters during the night. Street blockades had also been erected.

[17] "We ask the citizens of Culiacán not to leave home due to the blockades that have occurred in different parts of the city," Culiacán's mayor, Juan de Dios Gámez, wrote on Twitter.

[...]

B. THE CHAPITOS - GROUP PROFILE

[Source: Insight Crime, Group Profile "Chapitos", January 9, 2023; available at <https://insightcrime.org/mexico-organized-crime-news/los-chapitos/>]

[1] The now-jailed former Sinaloa Cartel leader Joaquín Guzmán Loera, alias "El Chapo," reportedly had many children but only a select few of them, known collectively as the Chapitos, are at the center of an ongoing internal feud for control of the group's operations against the last remaining member of the so-called "old guard," Ismael Zambada García, alias "El Mayo."

[2] While neither side has yet to exert the type of dominance that would make clear who is really in charge of the group's criminal activities, there's been no shortage of blood spilled as the two internal factions battle it out.

[3] In 2021 and 2022, the Chapitos continued to gain in strength becoming among the main producers and traffickers of fentanyl and methamphetamine to the United States. They expanded their territorial control in Sinaloa, Chihuahua, Sonora, and Baja California, and reinforced their earnings by profiting from illegal mining, fishing, migrant smuggling and more. They were named InSight Crime's Criminal Winners for 2022.

[4] They suffered a blow, however, when Ovidio Guzmán López was arrested for the second time in Sinaloa on January 5, 2023, leading to a major outbreak of violence in which more than two dozen people were killed.

[5] While El Chapo is said to have dozens of children, four of them have figured prominently into the Sinaloa Cartel's criminal operations: Joaquín Guzmán López, Ovidio Guzmán López, Iván Archivaldo Guzmán Salazar, and Jesús Alfredo Guzmán Salazar.

[6] Ovidio, Iván, and Jesús Alfredo were apparently brought into the Sinaloa Cartel's criminal operations at a young age as teenagers by their father and El Mayo in order to learn the ins and outs of the organization. Ovidio, who was sanctioned by the US Treasury Department's Office of Foreign Assets Control (OFAC) in 2012 and indicted in February 2019, has garnered the most attention in recent years.

[7] In October 2019, Mexican security forces launched a poorly planned operation to capture Ovidio in the Sinaloa state capital of Culiacán. Shortly after word of Ovidio's detention spread, Sinaloa Cartel members responded in force, swarming the city and launching an all-out offensive to demand his release. President Andrés Manuel López Obrador ultimately "ordered that the operation be stopped and that the presumed criminal be set free."

[8] According to the US Treasury Department, Ovidio is said to be a "key lieutenant" within the Sinaloa Cartel's ranks.

[...]

[9] Despite being in the crosshairs of US authorities, the Chapitos have only stepped up their efforts to exert dominance over the group their father once led. In February 2022, armed men - reportedly loyal to the Chapitos - riding in a convoy of dozens of vehicles laid siege on the municipality of Caborca near the US-Mexico border. For hours, the convoy occupied the city as local police were unable to repel them until morning. In the end, the attack left two dead and at least five others kidnapped.

[10] With the help of the Salazar, a local group aligned with the Sinaloa Cartel for years, the Chapitos have sought to secure control of a key drug trafficking corridor stretching from their home base in Sinaloa, through Sonora and Baja California, and over the US-Mexico border.

[11] Increased firepower may be helping their bid. In early March, the Mexican Army and National Guard raided four houses in Navojoa municipality in the south of Sonora state, seizing an arsenal of almost three million rounds of ammunition of varying calibers, six .50 caliber rifles, more than 150 handguns and automatic rifles, dozens of grenades and 12 bulletproof vests, among other drugs, magazines and tactical gear. This was one of the largest criminal arsenals ever seized in Mexico.

[12] After their notoriety rose significantly through 2021 and 2022, the Chapitos suffered a blow on January 5, 2023, when Ovidio was arrested in Culiacan, the state capital of Sinaloa. According to Mexican Defense Minister Luis Crescencio Sandoval, an Army patrol came upon a convoy of six armored trucks. The

occupants refused to cooperate with a check of the vehicles and opened fire on security forces. A large number of alleged Sinaloa Cartel members were arrested after the shootout, including Ovidio. At least seven soldiers were killed in this initial exchange of fire.

[13] Following his arrest, much like in 2019, blockades were set up across the city and other parts of Sinaloa, with cartel gunmen taking shots at police and army troops and even bringing down a military helicopter. Within hours, President López Obrador sent in reinforcements to calm the situation. As of January 9, at least 29 people had been killed following Ovidio's arrest, including ten Mexican soldiers.

[14] While Ovidio was not released this time, this action proved the rapid mobilization and response capacity of the Sinaloa Cartel on their own turf.

[...]

Geography

[15] The primary stomping grounds for the Chapitos are in their birthplace of Sinaloa state, the group's fiefdom in northwest Mexico along the country's Pacific coast, especially in the capital city of Culiacán.

[16] However, El Chapo's sons seem to have much more sway and strength within Culiacán and other urban centers. On the other hand, El Mayo is believed to maintain a strong hold on his rural networks in the areas surrounding the capital city, which the Chapitos haven't yet been able to seize control of.

[17] As a whole, the Sinaloa Cartel is operational in major cities stretching from New York City to Buenos Aires and countless others in between. The group also operates in at least 17 Mexican states, and by some estimates, in as many as 50 countries.

[18] More recently, the feud between the Chapitos and El Mayo has spread beyond its longtime center in Sinaloa to reach the states of Baja California and Sonora.

[...]

Discussion

I. Classification of the Situation and Applicable Law:

1. (*Document B paras [1]-[4], [9]-[18]*)

1. How would you classify the situation in Mexico? If it were to be considered an armed conflict, of what kind would it be and who would be the parties to that conflict? Can a drug cartel become a party to an armed conflict? (GC I-IV, Common Art. 3) (See also ICRC, Online Casebook, Mexico, Armed Clashes

between the Government and the Sinaloa Drug Cartel)

2. (*Document A, paras [1]-[7]; Document B, paras [3] and [4], [7], [9]-[18]*)

1. Does the intensity of the violence between the Sinaloa Cartel and the Mexican Government or other armed groups satisfy the requirements for the existence of a non-international armed conflict (NIAC)? (GC I-IV, Common Art. 3) (See also ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 70; Inter-American Commission on Human Rights, *Tablada*, paras 154-156; *Insight Crime, Sinaloa Cartel*)
2. Could one instance of intense violence suffice for a NIAC? And for international armed conflicts (IACs)? (GC I-IV, Common Arts 2 and 3) (See also ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 70; Inter-American Commission on Human Rights, *Tablada*, paras 154-156)

3. (*Document B, paras [1]-[4], [7], [9]-[18]*)

1. What level of organisation must an armed group meet in order to be considered a party to a NIAC? Does the Sinaloa Cartel meet the organisational requirement for a NIAC? (GC I-IV, Common Art. 3) (See also ICTY, *The Prosecutor v. Ramush Haradinaj et al*, Trial Chamber (2008), paras 50-60; *Insight Crime, Sinaloa Cartel*)
2. Assuming that the Cartel is indeed involved in an armed conflict against the Mexican Government, what are the implications of the internal feud between “los Chapitos” and “el Mayo” in the organisational requirement? Does a NIAC end if a group becomes “disorganised”? (See also ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 70; ICTY, *The Prosecutor v. Ramush Haradinaj et al*, Trial Chamber (2008), paras 50-60; *Insight Crime, Sinaloa Cartel*)

4. (*Document B, paras [15]-[18]*) Does the transnational character of many of the Cartel’s operations have an impact on the classification of the situation?

5. If the situation were to be considered an armed conflict, what would be the applicable law?

1. 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 Online Casebook, ICJ/Israel, *Separation Wall/Security Fence in the Occupied Palestinian Territory*, para. 106)
2. Assuming that the recapture operation took place in the context of an armed conflict, would IHL apply to the whole territory of Mexico, or only to certain regions like Culiacán? (See ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 70)

II. Conduct of Hostilities and Law Enforcement

6. What is the difference between the law enforcement and the conduct of hostilities paradigms?

1. How are the rules governing the use of force in law enforcement operations different from the ones governing hostilities? (See ICRC, *Expert Meeting: The Use of Force in Armed Conflicts*, Part I)
2. 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, Part I)

7. How do you determine whether the conduct of hostilities or the law enforcement paradigm applies to a particular situation involving the use of force? (See ICRC, Expert Meeting: The Use of Force in Armed Conflicts, Part I)

1. Does it matter whether the military or the police use lethal force?
2. Does the territory in which the use of lethal force occurred matter?
3. 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?

8. (*Document A, paras [1]-[11]; Document B paras [3] and [4], [12]-[14]*) Do you think IHL could be applicable to the use of force by the Mexican armed forces in the operation and aftermath of the recapture of Ovidio Guzmán? Or should the operation be assessed with the law enforcement paradigm? (See ICRC, Expert Meeting: The Use of Force in Armed Conflicts, Part I, II (c) and (e))

9. If IHL applied, were all members of the cartel, including every drug dealer, legitimate targets of attack? (CIHL, Rules 1, 3–6) (See also ICRC, Interpretive Guidance on Direct Participation in Hostilities, Part 2. A. II and B)

1. If not, which members were legitimate targets?
2. Would blocking certain areas of Culiacán amount to direct participation in hostilities?

10. (*Document B, paras [5]-[8], [12]*)

1. If IHL was indeed applicable to the situation, would Ovidio Guzmán, be considered a legitimate target of attack? (CIHL, Rules 1, 3–6) (See also ICRC, Interpretive Guidance on Direct Participation in Hostilities, Part 2. A. II)
2. Does IHL oblige belligerent parties to try and capture rather than kill enemy fighters?

11. (*Document A, para. [7]*) If IHL applied to the situation, were the alleged attacks on military and commercial airplanes and on the International Airport of Culiacán in conformity with IHL? Were the planes and airport military objectives? (CIHL, Rules 1–21)

12. (*Document B, paras [10]-[14]*)

1. Should the recapture and detention of Ovidio Guzmán López by State forces be considered in light of IHL or IHRL?
2. 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? (GC I-IV, Common Art. 3) (See also ICRC Online Casebook, United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments))

13. (*Document A, paras [2]-[8]; Document B, paras [13] and [14]*)

1. Assuming that there was a NIAC, was the Cartel's retaliatory attack against security forces because of the recapture of Ovidio Guzmán López a violation of IHL? May the attack be considered a reprisal under IHL? (CIHL, Rule 148)
2. Would it matter if only the state's armed forces and not civilians were targeted in the attack? Or if the situation was an IAC? (CIHL, Rules 145-148; GC IV, Art. 33; GC III, Art. 13; GC II, Art. 47; GC I, Art. 46)

14. (*Document A, para. [6]*)

1. If IHL of NIACs were indeed applicable to this situation, is the alleged seizure of the Red Cross ambulance and detention of medical personnel in conformity with IHL? (CIHL, Rules 25, 28-30)
2. May attacks be directed against medical personnel and medical units? Do medical personnel and units enjoy a special protection under IHL? (CIHL, Rules 25, 28-30)
3. May civilian medical personnel be obliged to treat wounded members of an armed group?

15. (*Document A, para. [6]*) Do journalists enjoy a special protection under IHL? May they be threatened and their vehicles seized? (CIHL, Rule 34)

III. Protected persons

16. (*Document A, paras [15]-[17]*) Should it be applicable, would the closing of schools, administrative offices and urging people not to leave their homes by the Mexican Government comply with IHL? Would it actually be required by IHL? And by IHRL? (CIHL, Rules 15, 22, 24; American Convention on Human Rights, Arts 4 and 22; International Covenant on Civil and Political Rights, Arts 6 and 12)

17. (*Document A, paras [1]-[17]; Document B, paras [7], [13] and [14]*) Comparing the impacts on the population of the first capture of Ovidio Guzmán in 2019 analysed in ICRC, Online Casebook, Mexico, Armed Clashes between the Government and the Sinaloa Drug Cartel and the recapture assessed in this case, do you agree with the decision to suspend the 2019 operation based on the need to protect peoples' lives?