Session Report

Please know you may design the structure of this report to better suit the session. It’s important to capture the key outcomes and solutions proposed for the future.

Session Title: Mafiocracy: State Capture by Organized Crime
Date & Time: Thursday, 08.12.2022, 3:30 pm - 5:00 pm GMT -5
Report prepared by: Jessica Chilin, MA, Researcher, Georgetown University
Moderated by: Dr. Bonnie J. Palifka, Associate Research Professor, Tecnológico de Monterrey
Panellists:
- Dr. Claudia Escobar Mejía - Distinguished Visiting Professor at George Mason University
- Dr. Louise I. Shelley - University Professor and Director of the Terrorism, Transnational Crime and Corruption Center (TraCCC), George Mason University
- Honorable Mark Wolf - Chair of Integrity Initiatives International, is a Senior United States District Judge and the former Chief Judge of the District of Massachusetts

Share the thematic focus of the session, its purpose and corruption risks?

- The focus of today’s panel is government by organized crime. This is otherwise known as Mafiocracy. It is a concept that is related to the term Political-Criminal Nexus\(^1\), but it is more specific. There are two interpretations of Mafiocracy for the Anti-Corruption Community to note:
  1. First: when the government acts like organized crime, but the organized crime itself comes from the government; and

\(^1\) “Political-Criminal Nexus,” U.S. Department of Justice, Office of Justice Programs, [https://www.ojp.gov.ncjrs/virtual-library/abstracts/political-criminal-nexus](https://www.ojp.gov.ncjrs/virtual-library/abstracts/political-criminal-nexus)
(2) Second: when organized criminal groups infiltrate and dominate the political and governance system. This type is the focus of today’s panel discussion.

- Organized groups have been defined as having structure and being somewhat permanent. They also engage in criminal acts for profit, using both violence and corruption to achieve their profit-seeking ends. Last but not least, they engage in money-laundering.

- Data from the Organized Crime Index\(^2\) shows that there is no clear relationship between corruption (x-axis: the Corruption Perceptions Index - CPI\(^3\)), and the Index’s indicator for mafia-style groups (y-axis). Therefore, the goal for the Anti-Corruption community is to identify the conditions under which corruption opens the door to organized crime, and organized crime takes over governance.

- In Russia and Mexico, as well as other countries, periods of democratisation and the privatisation of public resources enabled organized crime groups to consolidate power at the local and national levels.

- In Guatemala, a protracted civil war enabled military forces to engage in land grabbing and other abuses. The CICIG\(^4\) was established as a hybrid collaboration between the United Nations and the government of Guatemala, to overcome judicial impunity in corrupt national courts. The CICIG was recognized internationally as a success story, until a sitting president under investigation shuttered it.

- An International Anti-Corruption Court might seem like an impossible ideal, but a lot has changed in the last year and half. Approximately 300 world leaders (presidents and prime ministers), one sitting president, and 30 Nobel laureates have called for this court\(^5\). Canada and the Netherlands have incorporated this endeavor as part of their foreign policies. Along with Ecuador, they convened a major meeting in The Hague where a number of countries were invited to learn more\(^6\).

- The proposed International Anti-Corruption Court (IACC) is a crucial component of the international framework in combating grand corruption as well as ending impunity for kleptocrats – the worst abusers of human rights.

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**Summary of panellists’ contributions & discussion points**

**Dr. Bonnie J. Palifka, Associate Research Professor, Tecnológico de Monterrey**


\(^4\) “CICIG: Comisión Internacional contra la Impunidad en Guatemala” [CICIG - Comisión Internacional contra la Impunidad en Guatemala](https://www.cicig.gov.gt/)


\(^6\) “U.S. Statement: High-Level Roundtable on Corruption,” U.S. Department of State, [https://www.state.gov/u-s-statement-high-level-roundtable-on-corruption/](https://www.state.gov/u-s-statement-high-level-roundtable-on-corruption/)
Mexico has been called a Narco-State by many analysts. Some examples of the relationships between organized crime and the state include but are not limited to: 1) Notorious Joaquín Guzmán Loera—“El Chapo”—allegedly made significant campaign contributions to former Mexican President Enrique Peña Nieto; 2) drug trafficking routes change after elections if the party of the governor changes; and 3) violence increases before elections. In Mexico’s last presidential election cycle, 36 candidates or pre-candidates were murdered; there were 102 political homicides; and 77% of approximately a thousand acts of political aggression occurred at the municipal level.

A key question that deserves more attention, research, and discussion is: How does organized crime infiltrate at the municipal level? Conversations tend to focus on the macro level, i.e., the country level. However, it is critical to pay more attention to municipalities.

In the case of Mexico, it is not possible to talk about corruption without talking about organized crime. There is a need to tie these two together because it has been well established that there is a link between corruption and organized crime. Yet at most anti-corruption fora in Mexico, organized crime is considered a separate issue.

Dr. Louise I. Shelley - University Professor and Director of the Terrorism, Transnational Crime and Corruption Center (TraCCC), George Mason University

- In the year 2001, Dr. Shelley published an article based on her expertise in post-Soviet states, in which she warned that democratization in Mexico could very well lead to the kind of degeneration that Mexico has indeed seen for the past 20 years.
- In 1993, Dr. Shelley had a year’s sabbatical in which she spent half the year in Mexico and half the year in Italy, teaching courses on the Soviet Union and its early transitions. There was something very significant going on simultaneously in all of these aforementioned societies: Political Transitions. In Mexico, it was the transition from the Institutional Revolutionary Party (Partido Revolucionario Institucional - PRI). In the Soviet States, it was the transition from the monopoly of the Communist Party. And in Italy, it was the transition from Christian Democrats – a party that had dominated Italy through alliance with the Mafia.
- Additionally, this was the time of Thatcherism and Reaganism. In other words, the idea that if we privatize state enterprises, then we could make them more efficient in terms of economic output. As a result, there was an enormous transfer of property from the State. In Italy, approximately 40% of industry was owned by the State. The State did conduct some forms of vetting processes to make sure that

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these industries would not be purchased by organized crime. However, Mexico and the Soviet-Successor states did not do any vetting at all. Therefore, the entry of organized crime into the economy took place quite early as these countries were democartizing.

- Many years ago, a documentary series was produced entitled *Murder, Money, and Mexico*. The series traces the privatization of telecommunications and other assets. This was the same phenomenon that can be observed in the post-Soviet Union States. Moreover, it is worth noting that these criminal actors became Legislators in order to shape the laws of their respective market economies. Moreover, being State Legislators exempted them from criminal prosecution as long as they serve at any level of the Legislative Process.

- There is another feature in post-Soviet economies (outside the Baltics) known as “Corporate Raiding”, in which one builds up a business that is then taken over by an actor that is more politically connected. A 2008 article by Tom Firestone who represented the DOJ in Russia described this as a form of organized crime. He also noted how organized crime was used as a tool of power to take over these businesses. This corporate rating phenomenon is still going on, thus property rights have been secured. This is part of the reason why there is very little diversification of the post-soviet economies. Personal savings, investments, and individual entrepreneurial efforts are lost to corporate rating: when someone more powerful takes over an up-and-coming business. The lack of investments has resulted in the absence of economic development, which is being aggravated by the war in Ukraine.

Dr. Claudia Escobar Mejía - Distinguished Visiting Professor at George Mason University

- Dr. Escobar was born the same year that the civil war in Guatemala started. She decided to become a judge, to work in the judiciary, and help strengthen the rule of law. After 10 years of serving as a judge, she was exiled after becoming a whistleblower for denouncing corruption in the judicial sector.

- Even though there were many windows of opportunity to strengthen institutions (such as when the new constitution that was developed after the civil war ended in Guatemala), there is always a group that benefits from not obeying the law. It is not only criminal organizations, however. There is a criminal alliance between different groups that have taken over the institutions. Additionally, there are also kleptocrats who are in key positions in public life, and they use the government to enrich themselves.

- Moreover, there are also human rights violators (i.e., former army members) who utilized customs and duties to participate in various illicit contraband activities. Because this was the main business during the civil war, they did not want to lose access to it. They still kept control over Customs and Duties in spite of the Peace Accords being signed in 1996.

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10 “Murder Money & Mexico: The Rise and Fall of the Salinas Brothers,” Frontline, 2014, [https://www.youtube.com/watch?v=Mr4JwFTsRek](https://www.youtube.com/watch?v=Mr4JwFTsRek).

● There are also powerful elites: people who are unethical and do not want to pay taxes. Moreover, they pay very low wages, and essentially have appropriated the resources of Guatemala to enrich themselves for centuries (in essence, they perceive the country to be their own farm).

● Nowadays, international criminal organizations are extremely successful in networking. They have created this criminal alliance that is looking for one thing: impunity - to be able to engage in criminal activities without punishment. As a result, many countries in the Central American region have high impunity rates. In Guatemala, the impunity rate is 98%.

● In order to get away with impunity, these groups specifically engage in judicial corruption, which grants members of these allied criminal networks as much impunity as they want. From clerks in the lower courts to law firms, Dr. Escobar witnessed staggering amounts of judicial corruption in the 10 years she served as judge. These abo-gangsters (gangster-lawyers) – would use the system to extort citizens and steal their businesses and properties from them.

● In Guatemala, Politicians also set out to control the Judiciary. Even though the Constitution grants independence to the judges, politicians kept control of the Higher Courts and the Court of Appeals. In other words, they appointed enabler-judges that help them get away with criminal activities.

● When the corrupt process to appoint judges was discovered to have close ties to organized crime, various judges – including Dr. Escobar – sought the assistance of the International Commission against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala - CICIG). As an independent international body, CICIG was perceived by honest law-abiding Guatemalan judges to be able to investigate cases in an objective manner.

● Dr. Escobar had a case come up in her court that involved the Vice President. The President of the Guatemalan Congress reached out to Dr. Escobar to offer her a bribe in exchange for issuing a ruling that would favor the Vice President. Furthermore, she was offered a position in the Court of Appeals if she helped the Vice President. Furthermore, she was told that experience, knowledge, and values were irrelevant. Dr. Escobar recorded this conversation, and presented it to CICIG. They investigated, and he was sentenced to 14 years of prison time for influence peddling and bribery.

● CICIG was successful at investigating cases that had corruption networks. Their most famous case – known as La Linea – involved the President utilizing the Customs System to appropriate taxpayer money for himself and the vice president. This case has lasted many years, and in fact the final ruling was just released. The judge found them guilty of being connected to criminal alliances and

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13 “¿Qué es la CICIG?,” Comisión Internacional Contra la Impunidad en Guatemala, https://www.cicig.org/que-es-la-cicig/
organizations, yet did not find them guilty of enriching themselves. In short, there was no illicit enrichment\(^\text{16}\). In effect, this ruling opens the door for them to go to the court of appeals, and not be sentenced at all.

- The former President of Guatemala got CICIG out of the country\(^\text{17}\). The main consequence is that all the judicial systems in the country have been attacked. All key judges and prosecutors were forced to leave their positions, and are actively persecuted facing criminal trials. Furthermore, journalists are in jail, and there are many human right defenders in exile.

**Honorable Mark Wolf - Chair of Integrity Initiatives International, is a Senior United States District Judge and the former Chief Judge of the District of Massachusetts**

- Judge Mark Wolf is Chair of Integrity Initiatives International (III) whose mission is to strengthen the enforcement of criminal laws to punish and deter leaders who are corrupt and regularly violate human rights. III has done a lot of work helping create a national special anti-corruption court in Ukraine mentoring judges.
- III is actively coordinating a rapidly growing network of individuals and organizations to support the creation of an International Anti-Corruption Court (IACC)\(^\text{18}\), which would hold kleptocrats and their enablers accountable when their national governments are unable or unwilling to do so.
- The nexus of political corruption and organized crime is not unknown in the United States. In 1995, the Federal Government indicted the new leaders of the patriarca family and the notorious criminals of the Winter Hill Gang [i.e. James “Whitey” Bulger and Stephen Joseph Flemmi “The Riffleman”]. Whitey Bulger was a notorious murderer, and he had never been prosecuted neither by the state or the federal government. His brother, William “Billie” Bulger, was the President of the Massachusetts Senate, and he was one of the most powerful politicians in the State.
- Judge Wolf ordered – for the first time in American History – the Federal Bureau of Investigation (FBI) to disclose whether Bulger, Flemmi, and three others were top echelons of organized crime informants. After some resistance, the US Department of Justice (DOJ) complied. Nine months of hearings were conducted, and those hearings revealed that Bulger and Flemmi had given payments of money to FBI Agent John Conley and several of his colleagues in return for information about *la cosa nostra*\(^\text{19}\). As a result, the FBI did not investigate Bulger and Flemmi for various crimes, including murder. Moreover, Conley et al., would tell them when other federal agencies were investigating them, and would alert them of individuals informing on them – individuals who later either died or disappeared. They would even warn Bulger and Flemmi to flee before they were charged.

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\(^{18}\) “About the IACC,” Integrity Initiatives International, [http://integrityinitiatives.org/about-the-iacc](http://integrityinitiatives.org/about-the-iacc)

William “Billie” Bulger’s Law Partner extorted $500,000.00 USD from a developer in Boston, which he split the fee with Billie. The Boston Globe exposed this controversy, and the affair started to be investigated by the US Attorney’s Office in Boston. The FBI agent had received at least $6,000.00 USD from Whitey Bulger – John Conley – would advise and coach Billie Bulger on how to handle the US attorney general and frustrate the investigation. So, this extortion case fizzled.

In the United States, there is a lot more public corruption than we wish, but it tends to be aberrant in conduct. Most public officials rarely take bribes. Yet in other countries such as Mexico and Guatemala, people seek office not to serve the citizens, but to enrich themselves. The state capture by organized crime is analogous to RICO-Enterprises\(^\text{20}\) in the US. Indeed, mafia cases are prosecuted and punished under racketeering laws.

In countries such as Guatemala and Mexico, it is impossible to deal with this kind of mafiocracy because these governments are essentially racketeering-enterprises at the national level. The kleptocrats have impunity in their country because they control the police, the prosecutors, and the courts in their own country.

The idea of bringing in international experts under International Commissions against Impunity such as CICIG are excellent ideas, yet there are limitations. In Guatemala, CICIG officials were expelled after they started investigating the president. International Commissions are only there at the sufferance of the individuals in power. If kleptocrats are in power, these commissions will not have lasting legacies.

The idea of regional courts is very appealing, and they are difficult to establish. So far, they have been impossible to establish. For example, the African Union passed a resolution to create a regional Anti-corruption Court years ago. So far, however, they have not been able to do it. On another note, it is worth noting that kleptocrats exert great power on their own neighbouring countries.

In order to deal with grand corruption, mafiocracy, and the private enablers that launder their money, the Anti-Corruption Community needs to work to establish an International Anti-Corruption Court. Grand corruption has devastating consequences with international impacts. Ten times more is lost to corruption than is given in foreign aid to developing countries every year.

Former UN High Commissioner for Human Rights Navi Pillay is helping draft a treaty for the International Anti-Corruption Court. Navi Pillay has stated that “Corruption kills. The money stolen through corruption every year is enough to feed the world’s hungry 80 times over.”\(^\text{21}\)


● In April of 2020, Judge Wolf co-authored and published an article\textsuperscript{22} that called attention to how the COVID pandemic would be a bonanza for kleptocrats because billions of dollars were being rapidly distributed without the appropriate safeguards. It is predicted that the same will occur with the hundred billions of dollars that is to be distributed by the Green Climate Fund\textsuperscript{23} as it barely has an audit in function.

● It is important to recognize that these kleptocrats thrive with impunity in their countries not because of a lack of laws. In fact, 180 countries are parties to the UN Convention Against Corruption\textsuperscript{24}. Indeed, those laws are not enforced against the corrupt leaders who dominate administration of justice. The kleptocrats get away with their crimes because the unkept monitoring system is kept and intended to be weak.

● The court is an ever-evolving concept. Here are the main fundamentals: 1) it is intended to address this crucial gap in the international framework for combating grand corruption; 2) it would be a court of last resorts, and it would operate on the principle of complementarity; 3) it would have beneficial consequences such as imprisonment of defendant i.e. the kleptocrat; 4) it would open for the democratic process to elect someone who will serve their citizens; and 5) it would also order restitutions i.e. repatriating illicit assets for the benefit of the victims. Last but not least, it would have the capacity to prosecute presidents, prime ministers, high elected officials, individuals who pay bribes, and co-conspirators in money laundering (bankers, lawyers, enablers, etc.).

● An International Anti-Corruption Court (IACC) could be created by a relatively small number of countries if they include banking centres such as Switzerland and Singapore, among others. This is important because it is axiomatic that most kleptocrats do not want to keep their illicit profits in their own countries. They use the international banking system to launder the money.

Main outcomes of session (include quotes/highlights and interesting questions from the floor)

Quotes

● “Criminal alliances are extremely powerful. The fight is asymmetrical. An incipient democracy won’t have the tools to oppose these criminal groups. They are also very creative: they create powerful networks, and they have resources to reinvent themselves. This is the moment to think about how the International Community can create new ways to fight organized crimes.” – Dr. Claudia Escobar Mejia - Distinguished Visiting Professor at George Mason University

● “Grand corruption has devastating consequences with international impacts. Ten times more is lost to corruption than is given in foreign aid to developing countries every year.” – Honorable Mark Wolf - Chair of Integrity Initiatives International,


\textsuperscript{23} “Green Climate Fund,” \url{https://www.greenclimate.fund/}

\textsuperscript{24} “United Nations Convention against Corruption”, \url{https://www.unodc.org/unodc/en/treaties/CAC/}
is a Senior United States District Judge and the former Chief Judge of the District of Massachusetts

- “It is a point that these oligarchs are not just problems in their own countries: they are operating transnationally. They are destabilizing, exploiting and contributing to human rights violations and bribing the judiciary in other countries.” – Dr. Louise Shelley - University Professor and Director of the Terrorism, Transnational Crime and Corruption Center (TraCCC), George Mason University

- “An ounce of prevention is worth a pound of cure. You ignore the connections between organized crime and corruption at your own peril” – Dr. Bonnie J. Palifka - Associate Research Professor, Tecnológico de Monterrey

Questions of Interest
- What is Mafiocracy and how does it occur?
- How does a country, state, or city come to be governed as a mafiocracy?
- How organized crime infiltrates at the municipal level?
- Under which corruption opens the door to organized crime, and organized crime takes over governance?
- How can we – the Anti-Corruption Community – work to prevent Mafiocracy from occurring?
- How privatization and how corporate assets were transferred in Mexico, Italy, and Post-Soviet Union States such as Russia, Ukraine, and Kazakhstan to criminal actors (assets that gave these actors enormous footholds in the State)?
- How the merger of organized crime and corruption undermines property rights, livelihoods, economic investment, and the futures of these countries?
- How do criminal groups take over public spaces?
- What is the importance of the work done by International Commissions against Impunity and what are their limitations?

Questions from the Audience:
- Conference participant from Pakistan: The US is not a member of the International Criminal Court, and the US was not named as a supporter of the International Anti-Corruption Court by the panel. So, without the support of the US, would the idea of the International Anti-Corruption Court actually take ground?
- Conference participant from Côte D’Ivoire: Would the International Anti-Corruption Court exist within the framework of the United Nations?
- Conference participant from Colombia: Would the legalisation of cocaine decrease grand corruption and reduce mafiocracy?
- Conference participant from Canada: If countries are not willing to offer up their own citizens to an International Anti-Corruption Court; and if the US and other financial hubs (such as China and India) do not sign on – not to mention the complexity of global illicit financial flows –, would these not be stumbling blocks in making progress in cases going beyond one kleptocrat every 15 years?
- Conference participant from Nicaragua: How do we continue to the next step in combating mafiocracy?
Key recommendations for the future and concrete follow-up actions

We are starting a research project on this phenomenon of Mafiocracy, and we will be gathering data, looking at case studies, news articles, and academic sources. We are asking that the Anti-Corruption Community help us build our database by sending us your articles (news and academic). The goal is to eventually publish a book of case studies to advance and further our collective understanding of this important issue.

What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

1. Educate the Anti-Corruption Community on the need to establish an International Anti-Corruption Court. Integrity Initiatives International is the leading advocate for its creation, and they have published various education resources. Moreover, they have a rapidly growing network of individuals and organizations in the emerging international campaign for an IACC.

2. Have the Anti-Corruption Community support the Mafiocracy Database by sharing any relevant news and academic articles. The phenomenon of Mafiocracy is complex and entrenched, thus it needs robust data in order to advance our understanding of the linkages between organized crime and grand corruption.

Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

For Governments
● Encourage and invite elected officials to learn more about the campaign to establish the International Anti-Corruption Court (IACC). More information can be accessed through Integrity Initiatives International.

For Funders
● Consider funding our research project through grants to the Transparency and Anticorruption Initiative (Iniciativa de Transparencia, Anticorrupción – ITAC25) at the Tecnológico de Monterrey, Mexico. ITAC Associate Research Professor Dr. Bonnie J. Palifka will be the Principal Investigator of the project.

For Civil Society
● Continue to follow the money. This is a crucial step in mapping Mafiocracy networks and criminal alliances.

For Journalists and Academia
● Send us your news articles to build our database. Send us your academic articles to build our database. If you are interested in writing a chapter, please get in touch with Dr. Bonnie J. Palifka [bonnie@tec.mx].

25 Iniciativa de Transparencia y Anticorrupción,” https://www.transparenciayanticorrupcion.mx/
Rapporteur’s name and date submitted
Jessica Chilin, 09.12.2022