

# The Latin American Criminal Court (COPLA) – A Proposal for Regional Integration against Organized Transnational Crime

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Among the negative aspects of globalization we can highlight the appearance of large criminal networks whose structure and activities easily transcend national boundaries, and which work with the same logic as any multinational company, but dedicated to illicit activities. Drug trafficking is their main source of income, but not the only one. Through the same channels and through the same organizational network through which drugs circulate, all kinds of goods and services are exchanged today: from people reduced to slavery for the sex trafficking or clandestine employment, to weapons of all types and caliber, objects of cultural or archaeological value, stolen works of art and exotic animals illegally trapped.

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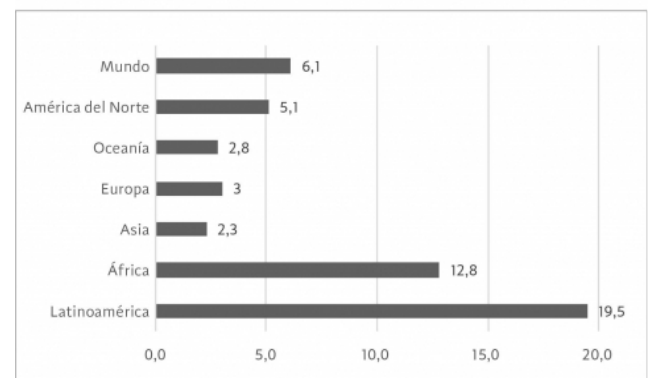
Money laundering, one of the best indicators of the existence of criminal activities, already represents an important part of the world Gross Domestic Product. When presenting the interim report of the Panel on Accountability, Transparency and International Financial Integrity (FACTI), the former President of Lithuania Dalia Grybauskaitė reported in this regard: "About 1.6 trillion dollars, 2.7% of world GDP, is lost due to money laundering. by criminals, which includes drug traffickers and organized crime". Other statistics from the same FACTI indicate that between 20,000 and 40,000 million dollars are allocated annually to bribes to public officials, and that governments lose between 500,000 and 600,000 million dollars a year due to money laundering and the transfer of profits from multinational companies to other countries, mainly: tax havens.

The worldwide growth of these phenomena shows that transnational organized crime is part of a global process

that impacts the whole world, although it does so unevenly. Since criminal activities necessarily imply a dispute for control of the territory and of ties with clients and suppliers, the homicide rate per inhabitant is an excellent indicator of the presence of mafia organizations in the territory, and is, due to its characteristics, a reliable and difficult to manipulate data. Well, the homicide rates registered by the United Nations Office on Drugs and Crime (UNODC) denote an irregular spread, with Africa and Latin America - the two poorest and most unequal continents on the planet - clearly above the world average. According to the latest data collected by the UNODC, Africa has, with 12.8 homicides per 100,000 inhabitants, more than double the value of 6.1 homicides per 100,000 inhabitants that the world averages, while Latin America, with a ratio of 19.5 / 100,000 triples it. We are talking about values four and six times higher than those of Oceania (2.8 / 100000), Europe (3/100000) and Asia (2.3 / 100000), the continents with the best performance in this area.

At the national level, Latin America also presents enormous inequalities, with the countries of Central America and the Caribbean widely leading the statistics. Jamaica (46.5 annual homicides per 100,000 inhabitants) is the most violent country in the most violent continent on the planet, followed closely by Venezuela (45.6 / 1,000,000), followed by Honduras (37.6), Trinidad-Tobago (28.2), Mexico (27), Colombia (24.3), Belize (24.3), El Salvador (19.7), Brazil (19.3) and Puerto Rico (16.5), which complete the regional top-ten.

Homicide Rate by Continent



Nota: para África se usó la tasa de homicidio del último año disponible (2015).

Fuente: elaboración propia a partir de datos de UNODC (2019a).

However, a view of the problem reduced to its comparative percentage aspect gives little idea of the seriousness of the situation. To describe it, it is enough to point out that the two largest and most important

countries in Central and South America, Mexico and Brazil, which represent approximately half of their respective GDP, population and surface area, are invaded by mafia networks whose criminal activities control part of their territories, have a huge corrupting impact on their political classes and destroy the lives of tens of thousands of citizens. During 2020, Brazil registered figures close to 40,000 murders per year; most of them attributed by the authorities to homicides committed in relation to crimes such as drug trafficking and human trafficking, controlled by the two largest criminal organizations in the country: the Comando Vermelho and the Comando Primeiro da Capital. For its part, according to data from the Executive Secretariat of the National Public Security System (SNSP), Mexico totaled 35,484 violent deaths, with a decrease of less than one percent in the homicide rate compared to 2019, despite the pandemic.

The simple arithmetic sum of the annual homicides registered in Mexico and Brazil totals more than 75,000 deaths per year, exactly halfway between the most optimistic (60,000 deaths) and the most pessimistic (90,000 deaths) estimates of the deaths caused by the greatest humanitarian tragedy of the last decades: the Syrian civil war.

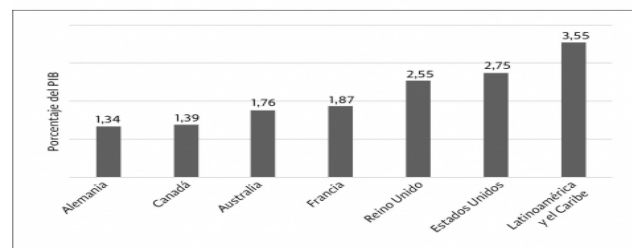


The impact on the Latin American economy is also devastating. In addition to its traditional problems of lack of investment, capital flight and brain drain, largely caused by the high levels of financial instability, legal insecurity and political corruption associated with organized crime, Latin America suffers from an incessant drain of resources due to this reason. Estimates of total costs reveal that crime costs Latin American countries about 3% of their gross domestic product (GDP), with a lower limit of 2.41% and an upper limit of 3.55%, and a wide range of variations associated with the heterogeneity of crime in the region.

In some Central American nations, the costs of crime are twice the regional average, while in others (the Southern Cone) they are less than half. The values obtained represent a total regional cost of US \$ 236,000 million per year measured at purchasing power parity (PPP) or an average US \$ 165,000 million at constant 2014 value. These figures are equivalent to about US \$

300 per capita average of the costs of each country. These are composed as follows: 42% corresponds to public spending (directed, above all, to police services), 37% to private spending and 21% to the social costs of crime. These are resources that are subtracted from investment in education, health and infrastructure, and that condemn to underdevelopment the countries that are forced to adopt them.

### Costs of organized Crime as a percentage of GDP



Nota: datos correspondientes a 2014 o al año disponible más reciente. Fuente: Jaitman et al. (2017).

### A Policy-Usual Problem with Polidirectional Effets

A purely socioeconomic vision of the phenomenon is, in any case, reductive. Organized crime is a problem of polycasual origins and whose effects are multi-directional; that is to say: on the one hand it recognizes multiple concomitant factors that originate and feed it, from economic underdevelopment, social inequality and the insufficient development of civil society and political institutions, to the long traditions of authoritarianism and corruption registered in political systems Latin Americans; on the other, its effects expand in many directions. With few exceptions, human rights violations in Latin America today do not correspond to the repressive actions of dictatorial military regimes such as those of the 1970s, but to the criminal activities of mafia organizations spread throughout the region, and concrete threats to life. of Latin American citizens - especially: the poorest and most vulnerable- come from the drug cartels and human trafficking that have become masters of the region.

The impact of organized crime is also enormous on many other agendas: feminist, since the treatment and trade of women forced into prostitution is a source of resources and contacts for these organizations; the trade union, since the smuggling of migrants across borders and their use as slave labor is another of the favorite activities of criminal organizations; the ecological one, because Latin America is the scene of dozens of annual murders carried out against the social leaders who are in charge of the defense of the terrestrial habitat; health and well-being, since drug use has a great health impact that the underdeveloped Latin American health systems are unable to alleviate. Finally, organized crime strongly affects the democratic agenda and that of institutional transparency, since the partial or total control of political power by the cartels that offer the option "Gold or lead" (you accept the bribe and do what we want or We kill you) is the main factor of corruption of Latin American political classes and

constitutes the greatest threat to democracy in the region.

### ***The Imbalance between National, Regional and Global***

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Noting that the rise of transnational organized crime is directly related to the development of digital connectivity technologies and supranational strategies derived from the phenomenon we call "globalization" seems obvious, but it is not. Indeed, the rise of criminal organizations is directly related to the predominance of all kinds of global and regional organizations over national actors. In this case, it implies an unequal battle between criminal organizations, structured with a global logic similar to that of any multinational company, and that of their opponents in the field of the rule of law: that is, the Justice and national security forces. It is from the imbalance between these two great sets of actors, one globalized and technologically advanced according to the demands of the 21st century, and the other adjusted to the typical territorial logic of 19th century national states, where an imbalance of power originates the flourishing of the transnational organized crime.

The well-known claim that regional and global problems require regional and global solutions finds fertile ground for analysis here. Thus, at least, the promoters of one of the projects focused on this field have understood it: the creation of a Latin American and Caribbean Criminal Court against Transnational Organized Crime (COPLA).

### ***The Copla Proposal***

"To the sad record of being the most socially unequal region in the world, Latin America has added that of being the most violent region on the planet" states the founding manifesto of the project, drawn up in 2013. And it continues: "The terrible situation in northern Mexico, the growth of Central American gangs, and of criminal violence, drug use, arms trafficking, narcotics and people forced into labor and sexual slavery in the rest of the countries constitute a regional problem with enormous negative repercussions on the life of Latin American citizens. Slowly but inexorably, the proliferation of groups dedicated to transnationally organized crime is becoming the main social problem in the region, a threat to democracy and the main brake on its economic development. Unfortunately, the only ones who seem to have understood the global nature of the world in which we live and managed to structure their organizations with a supranational logic that renders national borders obsolete are the criminals. International protection networks that hide fugitives

from justice in other countries, collaboration systems between criminal organizations that operate globally, global exchange of information, drugs and weapons, interconnected mafias in the region and in the world are just some of the strategies that they leave the national systems for the persecution of organized crime reduced to impotence".

With which the organizers go on to formulate an institutional proposal according to this diagnosis: "Faced with the proliferation of regionally structured criminal organizations and with powerful connections with their peers in other regions such as the Sicilian mafia, the Calabrian ndrangheta and the Russian and Chinese mafias, national security mechanisms suffer from growing obsolescence and are increasingly subordinate to powerless national political powers and, many times, accomplices. For these reasons, each day more manifest and evident, a regional strategy is necessary to confront a crime that is organized regionally; a strategy that also lays the foundations for a dynamic favorable to regional integration that is so necessary to face the other challenges facing the countries of Latin America. It is in this context that the Global Democracy proposal to create a Latin American Criminal Court against Transnational Organized Crime (COPLA) is inserted".

Summarizing the project in a few lines, the COPLA would be constituted on the basis of the experience developed in the creation of the International Criminal Court (ICC), with the modifications regarding its objectives, scope and location. On the one hand, unlike the ICC, the COPLA would not be in charge of prosecuting crimes against humanity, essentially associated with political objectives, but crimes related to the objective of profit, essentially of an economic nature. Consequently, its founding document would not be the Rome Statute but the Palermo Convention, a multilateral treaty against transnational organized crime sponsored by the United Nations, adopted in 2000, which is under the jurisdiction of the United Nations Office on Drugs and Crime (UNODC) and consists of a central agreement supplemented by three protocols: the protocol to prevent, suppress and punish human trafficking, the protocol against the smuggling of migrants and the protocol against the manufacture and illicit trafficking of weapons from fire.

According to the proposal of Global Democracy, the Argentine NGO driving the campaign, the COPLA would be in charge of combating transnational organized crime through a complementary and subsidiary regional court of the national justice systems, which also functions as an agency for the promotion of policies. public security at regional level; and would look for:

- Persecute and judge in a supranational instance the members or members of the highest rank of criminal organizations, usually with impunity and protected by networks of national judicial and political complicity.

- Recover the assets obtained illegally by those organizations; a measure of extraordinary efficacy in diminishing his powers, successfully experienced in Italy, Colombia and other countries. Such recoveries will promote reparation to the victims, both individual and collective.

Its jurisdiction would include the person who directs, manages, organizes or promotes an organized transnational criminal group destined to commit any of the following crimes:

- Illicit trafficking of narcotic drugs or psychotropic substances.
- Manufacture and / or illicit trafficking of firearms, their components, parts and ammunition.
- Human trafficking.
- Smuggling of migrants.
- Trafficking of cultural property
- Money laundering
- Transnational bribery

The COPLA would also differ from the ICC in the framework of its action, which would no longer include - at least, potentially - all the countries of the planet but only those of Latin America and the Caribbean; as we have mentioned, the region of the world most directly affected by transnational organized crime. In addition, according to the proposal of its promoters, the COPLA would be created in stages, starting with the constitution of a Latin American prosecutor's office that coordinates and strengthens the action of national prosecutors in the way that the Direzione Nazionale Antimafia has done in Italy, the creation of which would be succeeded by the constitution of the Court itself through the adhesion of a minimum number of countries with a minimum number of inhabitants and that includes at least one of the three largest nations in Latin America: Brazil, Mexico and Argentina.

As for the campaign, its objectives are "the creation of a broad Latin American and world coalition of organizations that fight against organized crime and are favorable to the creation of COPLA, the adhesion of the largest possible number of citizens of Latin America and the world, the drafting of a statute for its operation compatible with national constitutions and existing international treaties, the participation of political actors in the process, beginning with the political parties and their parliamentary representations and ending with the governments and regional organizations ". Specifically, the campaign for COPLA has been underway for 8 years, during which it has recorded the following achievements:

Four Latin American parliamentary organizations have given their unanimous support to the creation of COPLA: the Senate and the Chamber of Deputies of Argentina, the Chamber of Deputies of Paraguay and the Mercosur Parliament (Parlasur).

The previous Argentine national government, in the persons of its vice president Gabriela Michetti and its president Mauricio Macri, announced in the United Nations General Assembly the support of the Argentine government and its search for consensus throughout

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Latin America for the creation of COPLA.

The Mercosur Ministers of Justice and Homeland Security declared their support for COPLA as a viable alternative for a regional organization to fight transnational organized crime.

3000 Latin American citizens from 40 countries; 117 national parliamentarians from 13 countries, not only Latin American, and three former presidents of the region have also supported COPLA and its creation campaign.

### *Situation Diagnosis*

After enjoying four years of momentum related to the elevation of the campaign for COPLA to state policy by the Argentine government 2015-2019, the campaign for COPLA has entered a situation of indeterminacy. On the one hand, the loss of government by Cambiemos has implied its orphanhood with respect to the national executive powers: and no national state claims it as part of its political program. On the other hand, the increase in nationalist and populist tendencies in Latin America and throughout the world, both on the Right and the Left, has in itself implied strong opposition to the development of international and supranational institutions and caused limitations to the campaign to promote the COPLA both political and economic. Finally, the COVID-19 pandemic has strongly reduced the possibility of carrying out activities essential to its development: meetings, assemblies, congresses and outreach activities have been suspended until further notice given the government health bans and the reduction of air traffic in all the world.

Considering these factors, during this period the main challenge of the COPLA campaign seems to be to keep the flame burning by digitally promoting the adhesion of as many signatories as possible, the involvement of civil society associations, the participation of parliamentary sectors. and legal in the process of debate and the finalization of the drafting process of the statute draft carried out by the Jurists group for COPLA.

These are minimal but essential activities for relaunching the campaign during the period following the pandemic. It remains to be seen the degree of commitment that Latin American social, political and legal actors can express in the project and, eventually, in the case of its creation, its effectiveness in terms of reducing the impact of international organized crime in the region.