

State Capture in Mexico: A Theoretical and Historical Review

La captura del Estado en México: una revisión teórica e histórica

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ABSTRACT: The purpose of this article is to review the works of several academics specialized in the matter of security, which the authors will use as an analytical setting and revision their outcomes to define and understand the concept of state capture. Once the concept of state capture is defined, then the case of Mexico will be analysed. This article intends to discuss several indicators regarding state capture such as the rule of law, how political violence has also influenced the issues of corruption, impunity, and mentions how money laundering prevention serves as a tool for tackling corruption. In order to grasp an understanding what state capture is, we must first develop conceptualizations of corruption, impunity and its classifications, the rule of law, and the state apparatus. This article intends to analyse the implications that all of the above might have with regards to a state captured democracy, from an academic approach.

KEYWORDS: State capture, Organized Criminal Organizations, Money Laundering, Thick impunity, Rule of law.

RESUMEN: El propósito de este artículo es realizar un compendio de los diferentes autores especializados en el tema de seguridad, tomar estas investigaciones como eje para así interpretar, definir y entender el concepto de captura de Estado. Una vez que el concepto de captura de Estado haya sido identificado se analizará el caso de México. Para poder entender el concepto de captura de Estado es de suma importancia mencionar y entender los conceptos de: corrupción, impunidad y sus clasificaciones, el imperio de la ley y El Estado. También, se menciona la prevención del lavado de dinero como una herramienta para combatir la corrupción y la impunidad. Este artículo intentará entender las implicaciones de los conceptos anteriores en una democracia capturada desde un punto de vista académico.

PALABRAS CLAVE: Captura de Estado, Organizaciones Criminales, Lavado de Dinero, Impunidad gruesa, Imperio de la ley.

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INTRODUCTION

The core hypothesis presented by this article relies on the argument that there has not been sufficient and plausible evidence to support an effort regarding the Government's Administrations in detecting, condemning, and preventing money laundering specifically drug trafficking organizations within the Mexican territory. This leaves room for interpretation in how much is the state directly involved within such activities.

Therefore, one can begin to classify Mexico as being an example of a 'state captured Democracy'. This article offers a thorough analysis of the works of numerous security specialists, such as Helleman et al, Sonia Alda, Juan Antonio Le Clercq, and Garay Salamanca et al., to name just some. We will focus on their efforts in understanding the characteristics that contribute to the definition of a weak state, and how this may result in a state captured Democracy. These elements being, the concept and the uniform application of the rule of law in a state, the concept of impunity, corruption, political violence.

For this particular article, the object studied is criminal organizations, specifically drug trafficking criminal organizations within the Mexican territory from a historic approach, therefore analysing if they have been able to work as captors of the Mexican state, and ultimately the levels of implantation these may have within the state apparatus. And if so, which levels have they been able to reach so far, and by which means. A final section of this article will attempt to provide suggestions, recommendations, or actions towards how to effectively tackle the issue at hand. One of them, being effective money laundering detection efforts.

THE 'STATE CAPTURE' CONCEPT

The term has been overly popular after the dismemberment of the Soviet Union, because of the 'necessity of the reorientation and reduction of the state's role in the economy (Hellman et al. 2003: 752). According to Hellman when this phenomenon occurred in weak states or underdeveloped civil societies there was a latent fear of the 'leviathan state being replaced by a new fear towards oligarchs who manipulate politicians and shape institutions to advance and protect their own empires at the expense of social interest' (Hellman et al. 2003: 752).

Therefore, as stated by the definition provided by Helleman et al the concept of 'State capture' consists in a state that has no self- determination/governance and control rather than someone else has influence over the state's decisions. Hellman et al's investigation used the 1999 Business Environment and Enterprise Performance Survey (BEEPS) to compare and contrast information to understand how the oligarchs and the state behaved regarding corruption and state capture (Hellman et al. 2000).

Their works present a recognition that powerful firms have indeed been able to capture the state and collude with public officials to extract rents through the manipulation of the state power. What we highlight regarding one of the many virtues of the BEEPS is its capacity to 'provide a microeconomic perspective by the separation in the costs and benefits to firms associated with different forms of influence and corruption' (Hellman et al. 2003: 755).

In addition, and with the purpose of improving the quality of the data provided by the BEEPS the objective and nature of the project were explained to the interviewed subjects, the data was recorded anonymously without identifying names of respondents from the interviewed companies and they were collected not by the government but by

international organizations. The data collected by the BEEP includes over 20 former USSR countries and in each country, the sample collected was of over 150 firms each. There were 3 different categories within the classification of the firm's sector, manufacturing, mining and services.

THE IMPUNITY COMPLEX

This section will attempt to unwind the concept of impunity. Impunity can be defined as: 'crime without punishment, the absence or inexistence of sanctions nor legal reprisals when committing a crime' (Le Clercq, 2019: 21). In the paper presented Le Clercq discusses impunity and unbundled into different concepts, 'thick impunity' and 'thin impunity' depending on the degree the impunity implicates. 'thin impunity', as Le Clercq further discusses, functions within the relationship between people and the law, particularly in the realm of criminal law.

He introduces the concept of 'thin impunity' as a concept that is directly related with punitive justice which means that it will focus on the punishment, or the number of sentencing or rulings presented in relation to the crimes committed (Le Clercq, 2019: 21).

Then when presenting the concept 'thick impunity' the analysis widens and Le Clercq defines the concept by introducing the definition provided by the report from the United Nations Human Rights Council 2005 by Diane Orentlicher. Thick impunity 'means the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims'.

Le Clercq emphasizes how the 'tick impunity' conceptualization includes the relationship not only between the people and the law but rather a holistic approach which includes, the violation of human rights, institutional malfunctioning this refers not only to structural but also to the functional aspects of institutions, to name some in relation to the implications of impunity (Le Clercq, 2019)

Equally important, he mentions how the implications of thick impunity have social, economic, and also physiological effects in the victims. To review, the 'thick impunity' concept as explained by Le Clercq is not a narrow concept. Rather a 'bi-dimensional one, that focuses the core issues in two correlated aspects: institutional structure and the socio-political conditions that determine and might explain its routine repetition (Le Clercq, 2019: 22).

Le Clercq mentions impunity as a behaviour a person can learn and even socialize. He comes to this conclusion by citing and analysing Frederich (1968). Frederich identifies certain traits and refers to them as 'political pathologies. In his works he discusses how the normalization of this impunity within the political and social spheres hinder the possibility of a total eradication of impunity in the state'.

Another idea presented in this article is the 'levels of implantation' impunity might have within society and the state:

- Identifies problems within the Justice System
- Privileged aspects to the access of Security and Justice
- State capture
- Violations to the Human Rights
- Social notion of the appropriate

Therefore, within the levels of implantation according to the parameters presented before ‘state capture or the kidnapping of public institutions by groups or individuals to satisfy their personal necessities can be understood as: the level of implantation that exacerbates the first two. It has nothing to do with corruption and conflicts of interest as unbundled matters. It is meant to be understood as the systematic distortion of the public function or civil service’ (Le Clercq, 2019: 32). Complementary to this, we can further expand on specific causes of the state capture implantation level Le Clercq mentions.

Firstly, ‘authorities that reform state law or define social programmes to protect or incentivize their personal interests’ (Le Clercq, 2019). Secondly, ‘Criminal organizations that through the means of corruption. Collusion or threat of the use of violence as a cohesive method penetrate institutions and impose that institutions and authorities work for them’ (Le Clercq, 2019).

Thirdly, impunity agreements or pacts between political organizations and political parties that agree to use their positions of authority and public funding for a purpose that serves their own instead of the public interest. This is a measure to prevent or halt the processes of institutional change requires that might affect their own interests negatively. Additionally, as a measure to prevent an effective prosecution to the corruption or participation of political actors in illicit actions (Acemoglu & Robinson, 2006; Bueno de Mesquita et al. 2006; Le Clercq, 2019).

Finally, the extreme form of implantation of state capture consists in the existence of organized crime within the state apparatus (Chamblis, 1989; Fredrichs, 2009-2010; Karstendt, 2014; Le Clercq, 2019; Michalowski, 2014).

We would like to mention that there is another opinion, which is that the case of Mexico would not necessarily fall into the criteria of state capture rather than a criterion of Criminalized state, as Douglas Farah (2012) suggests in his paper “*El Crimen Transnacional, terrorismo y Estados Criminalizados de América Latina* (2011)”.

Then again, as an attempt on revisioning Le Clercq the author might want to acknowledge that indeed, ‘thick impunity’ could be the appropriate approach to understanding the wider concept and implications of the concept. Because indeed the social-political, economic and human rights factors are of vital importance into understanding the consequences of how impunity might then be one of the causes or reasons for corruption and the implantation of criminal organizations within a certain territory in the case of this specific article, Latin- America. Other parts of this article will attempt to explore what other causes might add to a ‘state capture democracy’ by localizing other aspects such as: violence, rule of law, weak state that in combination with impunity can make sense into understanding the phenomena of state capture within a country like Mexico.

The concept of the weak state will be introduced throughout this document, according to the Index of State Weakness in the Developing World by Susan E. Rice and Stewart Patrick from Brookings Global Economy and Development 2008.

We measure state weakness to each state’s effectiveness in delivering these four critical dimensions: fostering an environment conducive to sustainable and equitable economic growth; establishing and maintaining legitimate, transparent, and accountable political institutions; securing their territory; and meeting the basic human needs of their population. (Rice & Patrick, 2008: 3)

The second and third dimensions: establishing and maintaining, legitimate, transparent, and accountable political institutions, and securing their territory. Are the

two dimensions that will guide a fraction of this analysis as dimensions that will be analysed and connected as dimensions that may serve also to understand the concept of state capture.

THE CAPTURE AND CO-OPTED RECONFIGURATION OF THE STATE

Introducing the works of Garay Salamanca et al. (2008) the authors would like to present a second study from within the Latin- American region to provide a more localized context concerning defining and understanding the state capture concept.

In their paper, Garay Salamanca et al., discuss state capture as, ‘the form of full-scale corruption that weakens the economic structure of the state because of the disruption it provokes to the development of the laws, norms, decrees, rules and regulations’ (Garay et al. 2008: 15).

They also signal how the term state capture is often reserved for former communist states who are transitioning to democratic ones. Nevertheless, it is important to understand that it is not purely exclusive for these states.

Garay Salamanca et al. (2008) also highlights in their study how ‘most of the thoric and empiric studies regarding this matter a difference is made between ‘state capture’ and ‘administrative corruption’ to refer to the exact moment in which ‘corruption’ is committed. Moreover, ‘Administrative corruption an activity that is performed the allocated distortion of the early stages of normative and regulatory development of the state whereas state capture occurs within the execution and implementation of the laws and the rule of law’ (Garay et al. 2008: 16). They remark on how state capture happens within the enforcement of the rule of law. Therefore, it can be understood that a state with administrative corruption does not necessarily mean a state capture, but not vice-versa.

RULE OF LAW AS A FACTOR FOR IMPLANTATION OF ORGANIZED CRIME

In her paper, Alda discusses specifically the degree of impunity regarding criminal organizations in Latin America. This paper is not particularly focused on finding the causes for corruption rather the reasons why Criminal Organizations have the ability of functioning with such flexibility and impunity within the specific territories. The core of the discussion then being, the state’s apparent inability to inflict control over organized criminal organizations. Alda’s principal hypothesis revolves over the argument that, ‘the complicity and protection that state authorities provide for those same criminal organizations they allegedly seek to control’ (Alda, 2015: 64). In her study she also mentions that Latin-American states might be accurately classified as ‘weak states’ because of the lack of governance within their own structure and government, among other reasons.

Another important observation Alda postulates within her study is of ‘how weak states have sufficient entity and state capacity to withhold a security and justice system, alas not to prevent that this overall system remains protected from becoming an accomplice of criminal organizations’ (Alda, 2015: 65).

Another chapter of paramount importance regarding Alda’s argument is the rule of law or legal certainty a country is able or not to provide to all its citizens. The argument revolves around the understanding that ‘one of the principal causes of insecurity is not the criminal actors per se, rather than the incapacity of the state to provide a rule of law

over them' (Alda, 2015: 68). Moreover, even though she agrees that a consensus over the definition of a 'weak state' has yet to be understood. It is one of its intrinsic characteristics: the incapacity of the state to provide a homogeneous rule of law towards all its citizens.

Therefore, the rule of law states by definition that no one is above the law. Consequently, all members of government and their representatives must abide by it, and that they should be able to prosecute with the full extent of the law anyone who decides to infringe it within all its territory with no exception whatsoever. Then, whenever someone within the territory of the state decides either not to abide by that rule of law or not to enforce the rule of law equally for everyone. It allows legal uncertainty or impunity to present itself and as a consequence, corruption.

This might constitute an ideal scenario for organized crime organizations to be able to establish themselves within the legal uncertainty the weak states present, and therefore begin to settle not only in the territory but to operate fully by understanding they might or might not be accountable to the consequences of the rule of law over criminal actions.

Criminal organizations, in the end, similar to capitalist firms or companies have comparable goals to fulfil, the most possible enrichment they are allowed to have in the shortest amount of time and resources, capitalization. They are also and are a conglomerate of three or more associates.

In addition, 'criminal organizations provide mostly goods (illicit) and services from very different natures. Drug Trafficking, being the most important and profitable of them all (Alda, 2015: 10) It would be of the highest importance when defining criminal organizations, to highlight the use of violence as one of their means to support their criminal activities.

Regarding this last explanation, therefore it would be interesting to consider the similar pattern of behaviour within the argument Hellman et al discussed, in the end both the firms mentioned within the BEEPS and the criminal organizations provide goods and services. Both of them obey what Adam Smith first proposed in the Wealth of Nations. They are seeking to maximise their investment and resources and profit as much as they can from them.

Criminal organizations, then to maximise their investments might find a proliferate environment weak states might provide, such as a weak rule of law, unaccountability regarding financial institutions and transparency as a beneficial environment to establish and flourish.

As Alda discusses, corruption and the presence of organized crime in fact, should not be observed as isolated phenomena, on the contrary there is actually a correlation among them.

Another important issue tackled by this article, stresses the importance of a democratic state, transparency within its institutions and a thorough implementation of the rule of law within the state as indicators and elements that lower the implantation rate of criminal organizations within a state.

Therefore, again another consequence discussed by Alda's article consists in how an unequal application of the rule of law serves as an incentive for citizens, criminal organizations, and even members of government to act above the law and understand they might not be subject to its repercussions. An example of this might be that these citizens through the path of corruption have the means to 'buy' impunity to commit crimes within

a certain territory the authorities ‘granted’. Another important element cited in Alda’s paper is ‘the possibility of the negotiation of the rule of law for some (Alda, 2015:75). This can be repeatedly observed within Latin America’ (Alda, 2015; Gordillo, 1982; Méndez, O’Donnell y Pinheiro, 2002; Niño, 2005; Pásara, 2014; Walkmann, 2006).

Subsequently the authors would like to revision Alda now integrating Le Clercq and Hellman’s et al in an attempt of integrating their important elements to recognise the state capture democracy paradigm in Latin-America. Reintroducing the concept of ‘thick impunity’, by Le Clercq. The author would like to connect this concept with the idea Alda conceptualizes in her works, the weak state and the characteristic of a lack of governance and a thorough application of ‘the rule of law’ which is mentioned in Le Clercq’s works ‘to understand impunity in Mexico it involves two interconnected aspects: a dysfunctional judicial system and the existence of people are above the law’ (Le Clercq, 2019).

Both Le Clercq and Alda mention several elements that might be accurate to identify as ‘symptoms’ of a captured state problematic: ‘thick impunity’ which includes the characteristic of impunity as part of a weak state. This can be also understood as the inefficiency of the state to establish and equally enforce the ‘rule of law’ to everyone within the territory. Therefore, government officials, criminal organizations, or citizens would understand that there is a possibility for them to act above the law. The latter is also referring to Le Clercq’s levels of implantation and State capture understanding and explanation.

It would be of the highest importance then to examine the case of Mexico through these visions to then identify the problem. Paying special attention to the detection of ‘thick impunity’ ‘weak state’ ‘criminal organization implantation’ ‘violence’ and the homogenous enforcement ‘the rule of law’ to then maybe understand if indeed the case of Mexico could be a case of state capture and then to evaluate which efforts have already been executed to tackle the criminality issues, drug trafficking specifically. With the purpose of suggesting alternative or additional courses of action that could provide a plausible solution to the issue.

THE INDEX FOR GLOBAL IMPUNITY 2020, LE CLERCQ & RODRÍGUEZ ET AL.

Another relevant for this theoretical and historic review would be the study of the Global impunity Index 2020. This index combines quantitative and qualitative methods to provide an overview of impunity worldwide, and its relationship with other phenomena, inequality, corruption, and violence to name some. The authors would like to introduce some of the suggestions recommended in this study because of their relevance and direct relations towards effectively tackling corruption and impunity.

Regarding the specific topic of impunity this index suggests as follows: impunity persists even when there are national and local official institutions responsible of safeguarding access to justice for all citizens. Likewise, as shown in the GII results, systematic and historic impunity exists in countries with the capacity to reform detrimental legal structures that in many cases were inherited from the past (Le Clercq & Rodríguez, 2020). This analysis also highlights how impunity is most likely present in countries with high levels of socio-economic inequalities. Such as, it happens within the Mexican case.

The following are some of the several recommendations presented by the authors in the Index:

- 1) Combat money laundering. The prevention of money laundering through financial intelligence is a powerful instrument to reduce impunity in countries with a strong presence of organized crime and political corruption. The implementation of the 40 FATF Recommendations, the mutual evaluation mechanisms of the countries taking part of this international organization, as well as international cooperation in the exchange of information and best practices within the framework of the Egmont Group are showing important results to address impunity in many countries. The budgetary and legal strengthening of the Financial Intelligence Units is recommended, as well as improving the coordination mechanisms between these agencies with the national prosecutor's offices to increase the prosecution of cases related to crimes and high-impact acts of corruption. (Le Clercq & Rodríguez, 2020: 32)
- 2) Strengthening justice institutions. In addition to the professionalization of justice systems, in accordance with the best democratic standards and administrative efficiency, countries must provide them with sufficient human, financial and technological resources to fulfil their function. Justice systems must have sufficient capacities to deal with the amount of received complaints, not only in terms of the size of their population, but also in terms of the magnitude of crime and violence in their societies. Otherwise, their operation will be suboptimal, and promote corruption within such institutions. (Le Clercq & Rodríguez, 2020: 32)
- 3) Culture of legality, citizen participation and due diligence of companies. National governments alone cannot reduce impunity in their countries. It is necessary to involve citizens, civil organizations, the media and companies in the prevention of crimes. Countries should promote public governance policies to encourage the active participation of different social actors in crime prevention, as well as the reporting of common crimes and corruption. When societies have high standards for the respect of the law and reporting any potential crime, progress is made much faster in the fight against impunity. (Le Clercq & Rodríguez, 2020: 33)

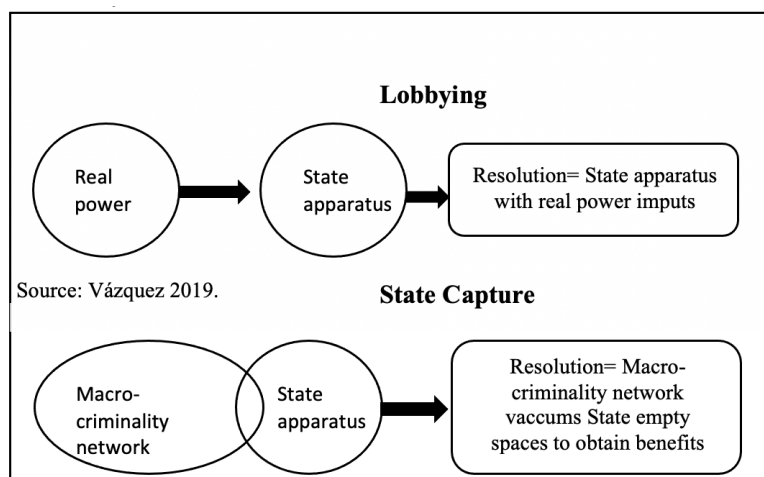
Even though these recommendations were made for countries worldwide they are very relevant for the analysis for the Mexican case.

MACRO-CRIMINALITY IN MEXICO

Macro-criminality is a concept that can be understood as, 'a network that has certain characteristics, to commit certain delinquent acts: disappearing, extortion, homicide, human trafficking, drug trafficking. To perform these activities in a widespread territorial area and to be set up by the elements of 3 different structures, the political, the criminal and the corporate' (Vázquez, 2019). The author explores Macro-criminality using the case of Mexico as an example.

It is necessary to highlight the importance of the first structure mentioned, the state, when discussing Macro-criminality. It is because of this that 'there is an explicit demand of impunity coming from members of the criminal networks' (Vázquez, 2019). Vázquez argues that this is an example of how state capture might be exemplified within the networks of macro criminality.

Annex 1. Macro Criminality Network: Lobbying vs. State Capture



Source: Vázquez 2019.

Source: Vázquez (2019)

Vázquez, mentions that in order to disrupt the human rights violations consequence of the macro criminal structures it is of vital importance to halt impunity, and create institutions within Mexico that have this particular task.

EVOLUTION OF ANTI MONEY LAUNDERING ACTIONS IN MEXICO

To prevent and to effectively implement money laundering activities, The Mexican Government has implemented the *Unidad de Inteligencia Financiera* (UIF) an institution that was created back in 2004.

Account blocking has been an action taken by this unit. The importance of the UIF relies on tackling the Impunity Pact that might exist between all the elements involved: the treasury department, supreme court ministers, magistrate courts, governors, union leaders, public notaries, among others.

The UIF could qualify as the biggest money laundering asset the current Mexican administration possesses.

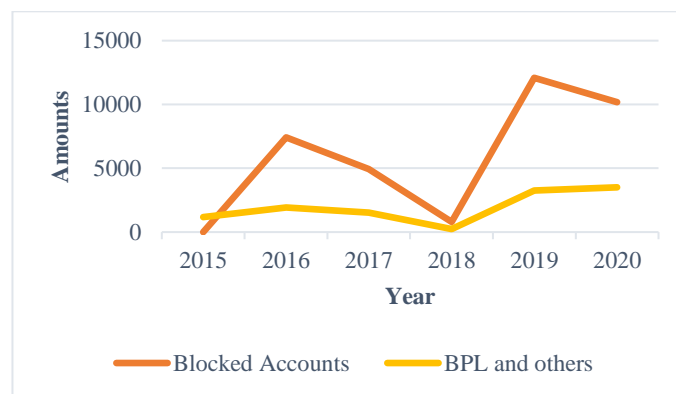
Table 1 shows an increase of the procedures of account blocking starting on 2015. An exponential growth is noticeable between 2018 and 2019. In 2018, only 800 accounts were blocked. In 2019 this number increased up to 12,085. The variable BPL (Blocked Persons List) respectively changes from 237 to 3,260.

Table 1. Statistics from Monetary Blocking

Year	Blocked Accounts	Blocked Amounts MXN	Blocked Amounts USD	Blocked Amounts Euro	BPL
2015	NA	11,078,729.71	0.78	NA	1,166
2016	7,414	907,875,425.89	276,817.30	NA	1,916
2017	4,941	92,413,177.36	421,971.65	NA	1,520
2018	800	70,630,347.57	4,262.89	NA	237
2019	12,085	3,985,654,815.49	50,187,444.16	877.18	3,260
2020	10,175	1,591,729,094.03	294,628,876.87	5,598.46	3,507

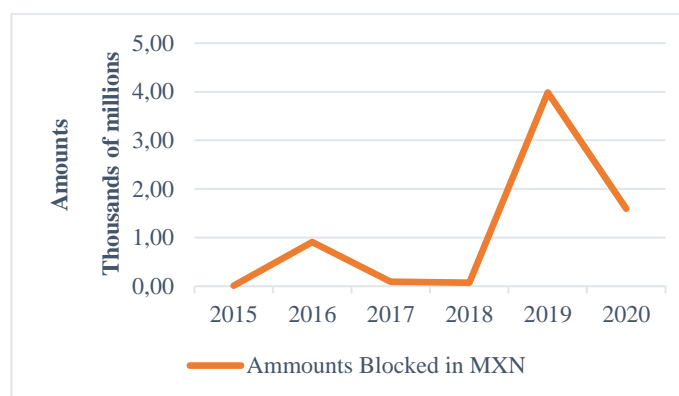
Source: Data UIF Mexico

Chart 1. Blocked Accounts and persons reported in BPL and others



Source: Data from the UIF

Chart 2. Amounts Blocked in MXN



Source: Data from the UIF

Table 2. Filed reports vs. Prosecuted cases

Year	Filed Reports	Prosecuted Cases
2015	109	NA
2016	112	5
2017	113	4
2018	85	2
2019	161	7
2020	68	3

Source: Data from the UIF

Table 2. presents how filed reports are rising as well. Almost duplicating the number between 2018 and 2019. It is also relevant to discuss the low number of criminally investigated cases. This has been flagged by the Financial Action Task Force (FATF) as one of the principal indicators on the flaws that the anti-money laundering presents in Mexico.

It is apparent that the UIF has been enhanced as a tool to trace money laundering activities, and illicit financial flows. Nevertheless, the challenges presented for units dedicated to the prevention of money-laundering are grand. It is of paramount importance to pay special attention to the cases prosecuted and to thoroughly apply the rule of law. Not only to previous administrations but specially to the current administration itself to avoid the mistake previous administrations committed and tackle current matters in actual time.

POLITICAL VIOLENCE IN MEXICO

As stated by the report presented by Etellekt Sexto Informe de Violencia Política en México, June, 2018, During the electoral process of 2018 the total of aggressions registered towards political actors was of 548 during the period of September 2017- June 2018. From this total, 391 or 71% were registered in the county or municipality level, 119 or 22% at the state level, and 38 or 7% at the federal level (Etellekt, 2018).

Then, political violence during electoral campaigns can be analysed as an example of how interests of some political groups are entangled with criminal interests in that area.

As we can understand from the numbers provided by this study, the level which registers the highest level of violence would be the county or municipality level with 71% followed by 22% at state level and 7% at a federal level.

Therefore, we can hypothesise that the highest area of opportunity for criminal implantation for this case might be in the county or municipal level for the Mexico case.

Historical reconfiguration of the co-opted State in Mexico

The key aspect discussed in this particular chapter intends to enlist examples of how and who might have captured the Mexican state. In addition, if so, how did the Mexican state end up in this particular position. This might be achieved by analysing the relationship

and involvement of both Mexican and U.S. governments and the drug trafficking organizations as actors within this matter. Their history, their actions and the consequences of such.

Drug trafficking organizations have been in vogue appearing in modern news broadcaster's prime time news since the early 1970's. When former U.S. President Richard Nixon, declared the "War on Drugs" criminalizing the use of marijuana and other drugs in the U.S., tensions and WASP public opinion cohesion against the use of these substances became harsher in the 80's when former- First Lady Nancy Regan began her highly public anti-drug campaign "Just-say-no". The agendas presented by networks from modern times have been setting the spotlight on the government's fight against drugs. Sometimes this particular topic is understood as if it were a contemporary problem as opposed to a historic one.

History and investigations tell us that drug trafficking organizations exist in Mexico and in the U.S. dating as far as back as to the 1930's.

By the late 1930s, drug production and trafficking, based on Mexican poppy and mariguana, was thriving in much of the Mexican northwest, especially in the states of Sinaloa, Durango, Chihuahua, and Baja California, which remain today's main producers and smuggling routes. (Medel & Thoumi, 2014: 196)

After the US Opium Exclusion Act of 1909 outlawed opium imports for smoking, Mexico turned into a drug exporting nation. The following US legislation, the Harrison Narcotic Act of 1914 and the Narcotic Drug Import and Export Act of 1922, "created a profitable market for narcotics in the United States" and along with the prohibition of alcohol "provided an incentive for Mexicans (and others) to ship drugs into the US and take advantage of the high prices" (Werner, 2001). (Medel & Thoumi, 2014)

Since the beginning, drug leaders have been tied to power structures. Some started their illicit careers with the experience they gathered as former police officers, such as the pioneer Arturo Vaca (Astorga 2005) in the 1930s, and more recently, Miguel Angel Félix-Gallardo, the Guadalajara drug organization kingpin. (Medel & Thoumi, 2014: 196-197)

Historically there is evidence to understand that criminal drug trafficking organizations have existed within the knowledge of the Mexican and U.S. governments' and have operated within the realm of the absence of a thorough enforcement of the rule of law within the state. The cooperation between former police officers and in some cases former-military trained special forces such as the case of The Zetas, a split group that deserted Mexican Special Forces and then formed part of The Golfo Cartel, but this is just a modern example of a situation that has happened earlier in history.

As the Oxford Handbook for Organized Crime explains 'A weak central state, coupled with powerful local caudillos including state governors used corruption as an instrument to exert control over the country's territory' (Medel & Thoumi, 2014: 198). Similar to what Le Clercq mentions in his works, about the 'levels of implantation' likewise Alda and her discussion about the 'corruption' in being correlated to the state capture.

The purpose of this article is to center the argument always coming back to the concept of the State capture democracy. In Mexico, it would be of the highest importance to mention the issues that have resulted in the capture of the state by government officials who do not abide or enforce the rule of law or who have inflicted impunity or acted in a corrupt way. Which then may result in the understanding of normalization of corruption and impunity within the functioning of the Mexican state.

This, as one of the many consequences it may cause, opens up a space for criminal organizations to vacuum and make attempts of implantation within the absence of legal certainty. To then operate by the use of corruption and bribery with the knowledge and tactics previously purchased from other criminal organizations or former government members.

Nevertheless, it is of paramount importance to emphasise that indeed there have been efforts from both Mexican and U.S. governments to halt criminal drug trafficking operations. The evidence suggests that the efforts that have been made by both actors. One of them, legislation. To provide some examples: In 1916, The Harrison Act, which pressured Mexico towards establishing international drug smuggling controls which resulted in President Venustiano Carranza in establishing an opium prohibition in the Mexican territory (Medel & Thoumi, 2014: 199).

Another example related with legislation attempts to combat illicit drug trafficking comes from President Álvaro Obregon, who in 1920 barred the cultivation of opium, cocaine and heroin (Medel & Thoumi, 2014: 200). This had consequences for Mexico in its international relations because then Mexico became a de facto signatory to the 1921 Hague Convention restricting, opium and cocaine despite not formally adhering to the convention until 1925 (Walker, 1981:49). Later in 1926 the Mexican Health Code was modified to include opium to the ban on marijuana cultivation and trade and, the following year.

It appeared to be that regulation and legislation was the solution both the U.S and Mexico's governments understood as viable to work against the drug situation. Then the Second World War occurred, and this had consequences for Mexico and the drug trafficking issue due to the fact that the opium routes were affected and disrupted. This is significant because of the goods and derives that come from opium and marijuana in this case Indian hemp which was required to manufacture some of the elements needed in a war, such as: rope and in the case of opium the production of morphine. Which resulted in a shift in the U.S. position towards, 'asking the Mexican authorities to allow legal production of marijuana and poppy plants in 1940' (Medel & Thoumi, 2014: 201; Toro, 1995: 11).

Therefore, opium became the largest crop in Sinaloa and Marijuana was blooming in the states of: Puebla, Morelos, Guerrero, San Luis Potosí, Coahuila and Tamaulipas. All of these states are Border states with the U.S with the exception of Veracruz, which is located in the southern part of the country and is an important port of the Gulf of Mexico (Medel & Thoumi, 2014).

The new issue in the U.S. agenda after the victory of the Second World War was how to control and restrict these productions once the war was won and over. The problem for both countries now was that drugs were starting to be transported by air in '1947 Harry Anslinger, declared Mexico the main U.S. opium supplier, adding that government officials were involved in drug production and smuggling (Medel & Thoumi, 2014: 201; Walker, 1996: 113) Mexican newspapers were saying Culiacan 'headquarters for opium smugglers and state governor Pablo-Macías Valenzuela, was a trafficker ringleader' (Astorga, 2005: 73; Medel & Thoumi, 2014: 201).

As the evidence advises, the author would like to suggest, even though it might be a contested suggestion. That, contrary to popular belief the drug trafficking issue in the Mexican and U.S. territories has a historic character. It is not a ground-breaking modern issue that just happened without prior background in modern times. It is not an issue that just appeared in the security agendas of both countries. Another suggestion the author

would like to discuss would be that maybe, the matter had just been a securitized issue reserved for only the military and government officials that, as a consequence of the media, digitalization and the rising violence that have encompassed the matter in the recent years made the issue gradually less a securitized matter and more a public matter.

As a general observation it can be understood that violence can be determined by the level of fragmentation and competition between criminal groups for certain territories or spaces that allow them to increase their power or business. This situation can become complicated if the state implements particularly aggressive attacks against criminal organizations, such as the Mexico case. In which the government's 'war against drugs' as a consequence triggered, since 2006, a violent wave that included an increase in, violence, corruption, and the fragmentation of the criminal organizations. (Alda, 2015: 16)

Resuming the analysis on the efforts both, U.S. and Mexican governments have implemented towards the containment and solution regarding the drug trafficking very pressing issues. Operations have to be introduced and mentioned. 'Washington concerns materialized in "Operation Intercept", a search- and- seizure anti-drug initiative that virtually closed the US-border with Mexico for more than 20 days in 1969' (Medel & Thoumi, 2014: 202; Toro, 1995: 17).

Then, in 1977 Mexico started a major U.S. backed- anti narcotics offensive ("Operation Condor"), a massive action involving 10,000 troops the operation was headed by army general José Hernández- Toledo and PGR officer Carlos Aguilar- Garza. Officer Aguilar-Garza was then arrested in possession of six kilograms of heroin and cocaine in Tamaulipas in 1984 (Gootemberg, 1999: 187). Operation Condor was of massive importance for Mexico 'it redefined the U.S.-Mexico relationship' (Medel & Thoumi, 2014: 202) on the war on drugs.

Between 1975 and 1979 plantations of opium and marijuana within the Mexican territory were destroyed with joint U.S and Mexican government's efforts. Some of the consequences regarding Operation Condor were that it started to slowly dilute the criminal drugtrafficking organizations to the point where 'less daring and smaller traffickers were out of business ensuring only the largest and best organized groups survived'. The groups that were able to remain, then gained: power, influence, weapons and as a consequence increased the use of violence (Medel & Thoumi, 2014: 203; Toro, 1995:17).

The analysis Medel and Thoumi discuss is how also Operation Condor had devastating consequences in terms of human rights violations, large-scale exodus of peasants to the cities. Revisioning Alda and her argument in regards of how 'the war against drugs' have increases in violence might be applicable in the analysis of Operation Condor.

Another example of joint U.S. and Mexican government and military operations to tackle organized crime worth mentioning for the purpose of this article would be the 'Merida Initiative' which is related with the previous example of the efforts made back in 2006. 'a 1.4 billion bilateral security pact that focused on law enforcement, and through which Mexico received equipment and training. The plan was approved by the U.S. congress in 2008 (Medel & Thoumi, 2014: 209; U.S. Senate Caucus on International Narcotics Control, 2011: 35-38).

Furthermore, and resuming the discourse line analysing the actions and issues that may result in a state captured democracy. Until now certain elements have been introduced and discussed such as, how 'thick impunity', an ineffective rule of law, corruption might lead to a weak state, and this can be transformed into a state captured democracy.

With the examples presented, it is possible to agree that there have been historical examples of elements of the Mexican government officials, such as the case of the governor Pablo Macías-Valenzuela identified as a drug ringmaster. Mexican police officers, such as the case of Arturo Vaca, and military high rank elements, such as the case of the Zetas, General Jesús-Gutierrez Rebollo, Coronel Esteban Cantu to name some. These examples provide evidence to suggest that as Le Clercq, Alda and Helleman have analysed 'the existence of political corruption and the presence of organized crime should not be analysed as an isolated phenomenon, rather than a correlation' (Alda, 2015: 10).

An Overview of Mexico and its Challenges Nowadays

Reintroducing Helleman et al. with the definition provided in a prior chapter of this article. The concept of 'state capture' consists in a state that has no self-determination/governance and control, rather than someone else has influence over the state's decisions. It is possible then to assert that at least in the Mexican case the evidence would suggest that the authorities might be providing protection to the criminal networks within the territory and regardless of the legislation and prohibitions governments exert and more importantly regardless the joint military operations both countries have executed.

The existence of impunity, corruption, and this inefficient application of the rule of law might continue to allow criminal organizations to be able to implant themselves within the state apparatus and consequently produce a state captured democracy in Mexico.

In addition, as the evidence presented might show the Mexican state might also be lacking on two of the dimensions the Index of State Weakness in the Developing World 2008 used to measure the strength or weakness of a certain state: establishing and maintaining, legitimate, transparent, and accountable political institutions, and securing their territory.

It is important to reintroduce the concept of political violence and suggest that in Mexico is a manner of executing state capture, specifically at a certain level of the state apparatus, in counties or municipalities. As previously mentioned and reinstating the investigations of Etellekt the fact that during the period of 2017 through 2018 the highest level of political violence was registered within the municipal or county levels 71% (Etellekt, 2018). Might suggest that at this specific level drugtrafficking criminal organizations are finding it profitable to exert political violence. Thus, it can be understood that the macro-criminality then has been able to introduce itself thoroughly into this level of the state. Whereas as the levels go higher meaning that in the state level political violence was registered only with 22%, and at the federal level only 7% (Etellekt, 2018). This may then indicate it seems to be more difficult for these organizations to excerpt political violence at a federal level and rather easy at a municipal level.

Moreover, establishing and maintaining, legitimate, transparent, and accountable political institutions and securing their territory for the Mexican case appears to be especially difficult at the municipal or county levels, which therefore can be understood that impunity, the unequal application of the rule of law and corruption might also be highly implicated at this level of the state. Macro-criminality is introduced in this specific level by the cohesion or exert of political violence to "caciques" a term in Spanish, particularly from Mexico which in English can be understood as 'political landlords',

from the drug trafficking or criminal organizations. This with the purpose of maintaining the status-quo that benefits their economic interests.

In case something was found within the allegations and charges of Genaro García Luna and General Cienfuegos in the trials conducted by the U.S. government in relation to their implication with drugtrafficking organizations and corruption it would be an indicator of political violence, impunity and cohesion of the Mexican state of federal and state levels with drugtrafficking organizations. Therefore, indicating not only collusion of part of the Mexican state apparatus but an implication of the highest levels therefore suggesting a full state capture case.

CONCLUSIONS

Compiling the works presented and to conclude. To have a capture state democracy would mean that: 'a state that has no self- determination/governance and control rather than someone else has influence over the state's decisions' which in the case of Mexico might be corruption, impunity, and a weak state that serve as the drivers for the 'someone' who would be: government officials who do not enforce the rule of law, citizens who do not abide by it, criminal organization leaders who coheres by the use of violence, and political violence who have influence over the state's own determination and governance.

Since according to the evidence provided indeed a state captured democracy might be observed in the case of Mexico, and a significant implantation from drug trafficking organizations might be observed through acts of macro-criminality such as political violence are visible principally at the municipal level, which is significant but not exclusive, of the other two levels of the state apparatus, the state and the federal. Therefore, the case of Mexico, it is necessary to implement measures to dismantle the state capture.

These measures should not only be the ones of legislative efforts such as the examples of the Acts and legislation that punished narcotics consumption, production and commerce enforced by both Mexican and U.S. governments. Military operations such as Operation Condor and the Merida Initiative. By themselves will serve little and might not produce the desired outcome, to tackle and dismantle criminal organizations in this case, drug trafficking organizations.

Almost all authors, and works presented for this article have outlined that a weak state and a captured state are corelated because two of the characteristics and dimensions of a weak state:

- A) Stablishing and maintaining, legitimate, transparent, and accountable political institutions,
- B) Securing their territory.

Correspondingly that they are interdependent with:

- 1) Enforcing the rule of law equally and effectively to everyone within the state territory.
- 2) It is of paramount importance to prevent criminal organizations from achieving implantation within the state apparatus to tackle impunity and corruption.

If these two points are not tackled it is most probable that criminal organizations can inflict pressure within the state apparatus in the form of corruption and in some cases violence to coerce legislation, decision making processes, institutional changes, decision

makers, government officials to their favour and capture the state democracy of a weak state. Not only at a municipal level, but rather gradually step up to the state level and to the federal level. Stressing the importance of understanding that a state capture is a multidimensional matter.

As the evidence suggests an example of this might be how political violence is still an unresolved issue in Mexico. Particularly at the municipal level where the political violence was registered at 71% (Etellect, 2018). How drug trafficking organizations are still able to exert this political violence to candidates and “caciques”.

It may also be concluded that in the case of Mexico the levels of implantation are similar to a pyramid. The highest levels of implantation are registered at the lower levels (municipal), 391 or 71%, 119 or 22% at the middle level (state level), and 38 or 7% at the highest level (federal level) (Etellect, 2018).

Therefore, it can be understood that Mexico might be analysed as a case of not only corruption within the state apparatus but increasingly as a state captured democracy. It would be of the highest importance to prevent the growing presence of criminal organizations within the state. Moreover, to avoid political violence from expanding to state and federal levels. Reaching the equivalent alarming levels that the municipalities report.

Since a state capture is a multidimensional issue, and it includes not only the factors presented in this section, but it also involves dimensions such as, the other levels of implantation Le Clercq mentions which are violations to the Human Rights, social notion of the appropriate, economic factors, social factors to name some. These latter elements such as poverty, the unequal distribution of opportunities and richness indeed affect the outcome of a state capture. Even though they were not explored in depth for the purpose of this paper. Subsequently, there cannot be an absolute and deterministic solution to the problem.

Reintroducing some of the elements and suggestions made by the Global Impunity Index 2020:

- A) Money laundering detecting operations are of the highest importance into targeting and dismantling organized crime networks. It would be another suggestion to pay special attention and implementation of money laundering operations within the municipal level, without excluding the state and federal level wielding the rule of law efficiently through all of these levels.
- B) Strengthening justice institutions. In addition to the professionalization of justice systems, in accordance with the best democratic standards and administrative efficiency, countries must provide them with sufficient human, financial and technological resources to fulfil their function. Justice systems must have sufficient capacities to deal with the amount of received complaints, not only in terms of the size of their population, but also in terms of the magnitude of crime and violence in their societies. Otherwise, their operation will be suboptimal, and promote corruption within such institutions. (Le Clercq & Rodríguez, 2020: 29).

In the same way, to tackle these matters efficiently it is imperative to challenge the elements of ‘thick impunity’ which are two of the dimensions Le Clercq remarks as ‘Levels of implantation’ which are: problems within the Justice System, privileged aspects to the access of Security and Justice that serve as indicators of a state capture. Moreover, as Alda has debated ‘the incapacity of the state to provide a homogeneous rule of law towards all its citizens’.

- C) ‘Culture of legality, citizen participation and due diligence of companies. National governments alone cannot reduce impunity in their countries. It is necessary to involve citizens, civil organizations, the media and companies in the prevention of crimes. Countries should promote public governance policies to encourage the active participation of different social actors in crime prevention, as well as the reporting of common crimes and corruption. When societies have high standards for the respect of the law and reporting any potential crime, progress is made much faster in the fight against impunity.’ (Le Clercq & Rodríguez, 2020: 29). This suggestion is related to the social notion of the appropriate that is also required from all citizens and is a direct consequence of the thorough application of the rule of law. It is also a consequence of education and programs that reinforce the spirit of legality not limited to the government and companies but encouraged throughout the general population.

As an additional recommendation, the authors would like to include a gender vision on this matter because if such dialogues are being less securitized and open to discussion from military spaces towards security specialists it is of paramount importance to consider gender diversity within the appointment of these specialists and military personnel. Because inclusion and a gender vision have the capacity of delivering positive outcomes to difficult matters, especially in the areas of peace and security. As well as in the areas where negotiation might be necessary. As reports and resolutions from the UN Security Council have been able to demonstrate.

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