

POLICY COMMENTARY

What Could an Asymmetrical Strategy Against Organised Crime Look Like? A Lesson from the Drug Policy Debate

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The debate regarding the ideal response to organised crime is quickly evolving, although it remains often remarkably disconnected from the even more rapidly moving discussion on drugs. One important connection between these two debates is the application of a similar set of terminology – namely that of harm reduction. Harm reduction focuses on examining policy responses in ways which both highlight prevention and individual and community impacts, including the impact of law enforcement itself. If such a lens is applied to organised crime it is suggested that the three areas of focus should be: the reducing of violence; protecting political processes, and reducing impunity through high level and “symbolic” prosecutions.

Keywords: Organised crime; harm reduction; asymmetrical strategy

Introduction

The discussions around drug policy and approaches to responding to organised crime are generally conducted in separate rooms and by different people, which is unfortunate because both discussions impact and overlay the other. Not least of which is because drugs remain a major source of profit for criminal groups.

Yet these important debates are conducted, for the most part, in parallel. Different international fora handle the issues separately, and while policy integration is at least closer in some states, there is still a remarkable divide between people who work in each of the areas. However, that divide may narrow in the future. One reason is that shifts in national drug policies may more clearly impact the nature and evolution of organised crime in the years ahead. If that occurs, a stronger connection may evolve between the two largely segregated discussions. Importantly, both debates are at interesting inflection points.

The debate around what is generally termed ‘harm reduction’ – treating drug abuse as a health issue rather than a law enforcement one – has been a central feature of discussions around drug policy for at least the last decade. It is now gathering significant momentum as countries, most notably in Latin America and Europe, have embraced its core tenants.

Although a clear global consensus has emerged, what is remarkable is the degree to which the health policy aspects can be openly discussed in a way that was not possible even a few years ago. While this may not lead in the medium term to a change in the overall drug control framework itself, it has and will continue to, stretch the boundaries of what is possible within the current international drug control regime.

In contrast, on the organised crime front progress is far less clear – at least in regards to formulating a clearer set of more unified global responses. There are multiple initiatives underway and a clear recognition in the UN 2030 Sustainable Development Agenda that the issue of organised crime and poor development are closely intertwined (Reitano and Hunter 2018). Nevertheless, unlike the drugs policy discussion, the organised crime debate remains strongly embedded in the language of law enforcement.

The UN Convention against Transnational Organised Crime (TOC) has only just agreed to a uniform review mechanism and has barely broached the subject of its prevention provisions, nor drawn clear agreement

on how these could be implemented. Law enforcement remains the over-riding prerogative of states, although this belies the complexity of what is in fact the nature of organised crime in many parts of the world. The phenomenon covers multiple, although often overlapping, criminal markets: drugs, extortion, gangs, environmental crime, organised fraud, etc., which often means that the overarching discussion on 'organised crime' in multilateral fora can seem far removed from how people experience in actuality. The TOC Convention is also heavily reliant on states as partners for implementation, while much of the challenge of organised crime is in places where state governments are weak or compromised (Van der Lijn 2018).

All of this suggests that these two connected (but strangely disconnected) debates on drugs and organised crime could draw from each other, particularly by building on the concept of what constitutes harm, and how that can be reduced.

In harm's way

If asymmetrical strategies can be regarded as recognising that the particular policy problem in question defies a set of straight forward (symmetrical) solutions, then debates around drug policy and organised crime responses have some powerful connections. However, neither have easy solutions.

The term asymmetrical (a word with heavy military connotations), has its own limitations. But it is a term that will resonate within security establishments in that it suggests that complex problems of insecurity cannot be tackled by a simple resort to force. Asymmetric strategies are also intimately linked to the recognition of the harms that may be being caused by an opponent as they 'attack vulnerabilities not appreciated by the 'target' (victim) or capitalize on the victim's limited preparation against the threat' (Bennett et al. 1999: 3). Reapplied to organised crime, that sentence neatly encapsulates the eroding 'slow burner' effect that the growth of criminal organisations has on communities and societies.

Asymmetrical strategies are defined by the acceptance that security challenges are multifaceted and that several approaches are necessary, and that these may need to be calibrated differently for different places and problems. And, like all effective strategies, the application of asymmetrical tools must evolve over time (Smith 2006: 371–404). That notion applies to organised crime strategy as well because of the diversity of what the term 'organised crime' implies, and because the policy tools range from communication, to market regulation to enforcement, etc.

It is also worth noting here that the term 'strategy' occurs far too seldom in the debate on responding to organised crime. That is in part because such multi-faceted strategies, whether on the local, regional or national level, are complex and often opposed by law enforcement, which views response as purely within its domain. In the often limited viewpoint of some law enforcement leaders, such strategies do little to reduce organised crime and take away resources from law enforcement itself. They can also appear fragmented and lacking a central idea – a mass of activity without always a clear theme. There is much to learn from the harm reduction discussion in the drugs debate.

Reducing the harm from drugs and from organised crime arguably requires a constellation of various responses at different levels, to achieve success. But every strategic policy package needs a golden thread. In the drug policy discussion, the harm reduction responses have been quintessentially that: an attempt to broaden the debate from law enforcement policies alone to a wider set of alternatives, all based around the harm caused to individual drug users, and strategies to reduce or prevent that harm.

Harm at the back end

Language and labelling has always been an important feature of the drug policy discussion. Even though terms many terms such as 'harm reduction' are used, they may have widely different meanings in different contexts. However, it is seldom noted that in the context of the current debate, 'harm reduction' most often refers to a policy options where drugs are bought and used at the 'front end' of the market.

The term 'harm reduction' has over time become exclusively associated with health care policy interventions related to drug use – a result of the siloed debate within the drug policy discussion itself. Yet, the term 'harm reduction,' is far from a unique concern for only protagonists in the drug policy discussion, and one that occurs in a wider set of public policy debates (see Wolff 2011) – although the term has been historically excluded from debates about organized crime.

For example, development and humanitarian practitioners often refer to the 'do no harm' principle, meaning that their actions should not exacerbate any situation where they intervene (Anderson 1999). The arguments around 'harm reduction' in the drug policy field and the response to the war on drugs itself revolve around a similar premise: policy interventions should be people-centric, should aim to reduce harm, and should not create a greater set of harms in their implementation than are already present.

Despite this focus on 'harm reduction' and its alignment with medical and health interventions in the drugs debate, the orientation of the current discussion has led to ending harm reduction principles once the upper reaches of illicit economies are discussed: that is, essentially along the supply chains which move the drugs, and in countering the organised criminal groups who control them.

In fact, the failure to extend the principle of 'harm reduction' throughout the drug trafficking chain is leading to an unexpected anomaly. While 'harm reduction' principles applies to the front end of drug markets, where substances are sold and used, further up the chain, we need to renew our efforts on 'supply reduction,' identifying traffickers and combatting organised crime. This was the conclusion for example of the two regional Commissions on Drugs for Latin America and West Africa (OAS 2013, WACD 2014) – both of which were crucial to shifting drug policy debates at regional level.

All of this suggests that at the very least a new set of standard terminology is needed, one that can span analysis and responses across illicit drug markets from beginning to end, and particularly in responses to organised crime. If such a terminology can be applied across the full chain where drugs as an illegal commodity is concerned, then it can presumably be applied to all illicit commodities traded by criminal groups – and indeed to the harm caused by some of core activities of criminal operations such as extortion, targeted violence and the disruption of state services such as education and health.

The harm of organised crime

Identifying the harm caused by organised crime varies by market. Illicit markets and organised crime erode sustainable development across a range of sectors. In contexts that are fragile and livelihoods are tenuous, the shocks resulting from organized crime erode communities, families and individual resilience.

Whether this is in the case of the trafficking of environmental commodities such as timber or animal products that cause soil erosion or undermine livelihoods from tourism; the illegal mining of state resources; overfishing by criminal operations; health systems that are infiltrated by counterfeit pharmaceuticals; or the control of local drug markets decimating school systems, the cost is incalculably high (GI 2015). All the UN's Sustainable Development goals are impacted by organised crime – in just over ten percent of cases achieving the goals are *directly* linked to reducing organised crime (GI 2016: 1).

But three broad and particularly powerful harms characterise most organised crime supply chains and across a variety of criminal markets. These are primary or significant harms – addressing them may reduce other harms too. They are: the harm caused by conflict or violence fuelled or associated with illicit markets; the harm caused by the distorting impact of illicit funds on politics and political processes; and the harm caused by long-standing impunity and damage to the rule of law.

In none of these cases will an exclusively law enforcement or security based response be adequate to address the scope of the challenge – and rational law enforcement officials are the first to recognise this reality. Each of the three harms results in an erosion of personal security and undercut the institutions of governance. Other than violence and death, the impact of all these areas is intangible. Nevertheless, each constitutes a powerful eroding force, subverting the very systems that allow democratic governance and livelihoods to be sustained. Thus, none of the responses in these three areas is on its own a law enforcement response.

Indeed, to conceive of the responses too narrowly will mean that a focus on developing more comprehensive and sophisticated alternatives would have been lost from the outset. These three issues are novel ideas, but they have not been as directly connected to the discussion on global policy responses to organised crime as is warranted by a more coherent and strategic approach. Each of the three areas is discussed briefly in turn.

Ending conflict and violence

There is perhaps no clearer connection between conflict, fragility and the presence of organised crime or illicit trafficking than the steady uptick of Security Council resolutions which link them. The Council, concerned as it is with issues of 'peace and security,' has mentioned or referred to the issue of organised crime or illicit trafficking in just over a third of all its resolutions between 2000 and 2017.¹

Also important is the fact that the number of mentions of organised crime in Security Council resolutions has increased; peaking in 2014, when a remarkable 63 percent of resolutions mentioned or referred to the issue of illicit trafficking and organised crime. That is a remarkable development – but it is one that is not often mentioned nor well understood.

¹ The data Security Council Resolutions is drawn from a yet unpublished review of all resolutions between 2000 and 2017 conducted by the GI.

Such an increase suggests that there is a rapid growth and connection between a diversity of conflicts in the current global context and linkages to organised crime. Yet, policy responses are narrow, often confined to, for example, increasing the police component of UN peacekeeping missions – and not necessarily ensuring that they have the skills or mandate to take on complex investigations (see Van der Lijn 2018).

The policy discussion on conflict spaces and organised crime therefore remains remarkably restricted, with great scope for rethinking how we approach this area. For example, efforts to build better information resources and empower the UN to collect 'crime intelligence' have edged slowly forward, but capacities remain weak. Furthermore, a narrow focus only on conflict zones is itself misplaced. Outside of countries in conflict, violence and homicide cause great human and financial costs:– in fact, in some cases ordinary levels of criminal violence are greater than reported deaths from conflict zones (Fearon and Hoeffler 2014).

The 2011 World Development Report calculated that areas exposed to prolonged violence and conflict experienced a 20 percent loss in development performance in comparison to more stable and peaceful peers (World Bank 2011). Yet pervasive violence is often the result of a complex overlay between political and criminal elements as well as economic exclusion. In marginal areas, such violence, particularly high homicide rates, is often the result of street or gang violence around low-level drug markets, which is at its highest when the markets are the process of consolidating. As Nicholas Barnes notes in an important recent article,

'organised crime and its violence is very much a political phenomenon as criminal organisations negotiate (sometimes violently) with the state over not just the control of the drug trade or access to illicit markets but over who is the dominant authority on a local level: who controls violence, provides order, and makes the rules that govern society' (2017: 967).

Take the case of Cape Town, where the 2014 homicide rate is 60 murders per 100,000 people (and in some places over 100 per 100,000, closer to what might be regarded as a conflict zone) (Kriegler and Shaw 2016). That rate, which has increased exponentially over the last couple of years, is a direct result of gang conflicts fuelled by efforts to control local drug markets in alignment with corrupt police. The negative impact has been significantly more severe because of the criminal sale of surplus weaponry from the police armoury to gang leaders. These are in essence criminal conflicts overlain with politics, competition between the state and gangs, and collusion between parts of the security establishment and criminal networks (Shaw 2017).

A number of the governments in Central and South America have noted that the war on drugs is just as potent and violent as any intra-state conflict or insurgency (Whaites 2015). The increasing power of criminal groups in Latin America has created a violent threat to children and youngsters who cannot achieve a decent lifestyle in their home states, triggering large scale displacement of populations both inside and outside their countries, with significant humanitarian and protection consequences (Atuesta 2014).

Central American cities, many of which have homicide rates above 100 victims per 100,000 people, suffer from the problem in an extreme form. In Central America and Mexico, an estimated 30 percent of murders are directly attributed to organised crime or gang violence (UNODC 2013) although some estimates for Mexico are far higher – up to 75 percent (Dittmar 2018). Violence, and the threat thereof, is used as a means of criminal control, with extortion serving as system of distorted taxation aimed at buying security.

Regrettably, despite extensive efforts, we have surprisingly little to show for our efforts to reduce street-level gang related drug violence in the cities of the developing world. Efforts that have focused on the manifestations of violence and conflict without assessing the role of illicit flows and criminal networks as causal factors have similarly been unsuccessful. For example, analysis of experimentation with gang truces, including those most recently in the Americas between 2012–14, showed that the most successful truces achieved their primary objective to reduce the rate of violent homicides in the short term, but in the medium to long-term they struggled to achieve sustainability whilst trafficking activities continued (Katz and Amaya 2015).

This debate is not new, but the challenge is now of great urgency, with the growth of mega-cities and the intersection between drugs, criminal networks and terrorism in several of them (Shelley 2014). However, violence is not associated with all criminal markets, and is often locally contained, amongst the most marginalised, in major urban complexes. This necessitates that we need to consider urban security, redoubling our efforts to seek better solutions for the urban poor, and a concerted effort to make a linkage between security and development issues, not in order to "securitise" development, but in order to protect development interventions from criminal exploitation – and to deliver services where they are needed most.

Protecting political processes

A second, and related question, is the harm related to illicit trafficking and its impact on political processes, most pertinently illegal money entering into politics or funding political interests. This is of increasing concern in many developing countries where drug trafficking is prevalent. Our own recent study of the burgeoning heroin trade along the East African coast suggests just how significantly drug profits can influence local political economies (Haysom et al. 2018). For example, in Mozambique an apparent long-term pact between the ruling party and drug traffickers has allowed the country to be used as a transit route, while filling political party coffers and sustaining patronage networks (Ibid.). The same applies in many other countries, particularly as the emphasis on reducing the levels of violence around political campaigning has required more insidious and covert levels of political manipulation (IDEA 2013).

Given the absence of electoral transparency, legislation in the majority of jurisdictions is lacking, and even where the legislation exists, the capacity to oversee, regulate and enforce that legislation is inadequate. Consequently, understanding the influence of key criminal figures on political and electoral process is a significant challenge. The modus operandi of important criminal figures is to ensure that they have political protection to safeguard their businesses and ensure that they are not prosecuted.

One of the most effective ways of ensuring political protection is to provide much needed funding to political parties, and by securing the political endorsement of those in a position to create and enforce the law. This has created a degree of complicity between criminal enterprises and politics in many jurisdictions. In South Africa, in what has been termed locally as 'state capture', a single family owned business dominated engagements between the private sector and the state, dramatically eroding the institutions of governance while strengthening systems of patronage (Myburgh 2017).

It follows that a set of policy solutions beyond simple support to law enforcement agencies is required. This new policy must focus on raising the costs of blurring the distinctions between crime and politics: or what a pathbreaking recent study of India shows to be a 'symbiosis of crime and politics' where 'democratic elections and large numbers of elected officials tied to illegal activity can comfortably exist' (Vaishnav 2017: 13). There are no easy solutions, but we must start with a greater focus on the issue of political party funding and from where it is drawn. This must be combined with sustained support for civil society and free media in countries where criminal funding plays a significant role in shaping political choices.

An end to impunity

As this association and criminalisation of the state continues and strengthens, the result is the creation of widespread impunity for criminal acts. Impunity is harmful because it generally allows high-level traffickers (often with political connections) to operate illicit activities unimpeded, while lower-level individuals are targeted: people who are almost always from excluded and marginalised communities. In many contexts, those involved in protecting drug trafficking activity accumulate enormous influence and are nearly immune from punishment. This is particularly true in states where justice institutions have been compromised or weakened, such as in periods of conflict or post-conflict.

In many, although not all, such instances there is little chance of justice being served. In Guinea-Bissau and in several Central American states, police, prosecutors, and judges are often too scared or too compromised to challenge the powerful (ICG 2017). Those who engage in drug trafficking and those who protect them are highly unlikely to be prosecuted. That level of impunity causes severe damage to states, undercutting their long-term ability to deliver services and compromising key institutions – a tangible set of harms, in particular for the poor who rely on state services and infrastructure. How to end impunity in such cases is and will be a key challenge for future policy making. So, what options are available?

The standard international response has been to provide training and institutional support for law enforcement agencies. But such efforts are largely wasted when there is little protection for those officials who will have to conduct high-level investigations, arrests and prosecutions. No matter how willing or well-trained the police were in Guinea-Bissau for example, there was little chance of making significant progress (Shaw 2015). Where arrests were made and drugs or money seized, 'high-level' interventions quickly ensured that the good work was undone.

What is required are responses that partner across borders, to provide alternatives to compromised institutions. In many cases this is only possible when states have become so weak that international intervention is mandated by the Security Council, or at least when an intervention can no longer be resisted by corrupt elites. Such partnerships create important precedents and lessons that can be applied in future cases (Cockayne 2013).

An important (and unexplored) example of rule of law partnership occurred in the case of maritime piracy where courts in neighbouring states (Kenya, and the Seychelles) tried suspects from a state (Somalia) where justice infrastructure was weak or compromised (Warner 2013). Although admittedly this did not lead to the arrest and trial of high-level people, it was a unique partnership between developed and developing countries. While it presented a range of political challenges for both sides, it was largely successful in bringing to trial low-level pirates, sending an important and widespread message about the need for respect for the rule of law.

Over a longer period, a UN Commission has acted to investigate high-level government officials in Guatemala on organised crime and corruption charges. While the results have arguably been mixed, the Commission has played a key recent role in a major corruption scandal that brought down the government (ICG 2011).

While important, high-level targeting and prosecutions are not by themselves sufficient to revitalize a weak justice sector and support it in a fight against organised crime. In order for actions that reduce impunity to have a long-lasting effect, they must be coupled with measures to increase the exposure of criminals and other drivers of illicit activities and organised crime in general. Such programmes complement the high-level interventions to reduce impunity by making it more difficult to achieve impunity in the first place.

In the future, the question should be less about how assistance can be delivered to law enforcement agencies, but rather how a set of institutions can be created that build a partnership between different interests and seek to isolate corrupt or criminal elites. Could a regional court to try drug trafficking cases be agreed in West Africa for example? Can we push forward more cases (such as in Guatemala) where internal and external partners work together in new hybrid institutions, protected from local corrupting influences, to bring high-level traffickers, within the framework of the rule of law, in front of legitimate and working courts? Developing such arrangements must be the focus of global public policy responses to organised crime.

Conclusion: Towards asymmetrical organised crime strategies

If the concept of reducing harm is applied to the challenge of countering organised crime, the policy filter through which we measure success shifts significantly. At the outset it changes the debate on which policy areas to concentrate, and within these areas it challenges us to think more clearly about how to measure actual achievement through a reduction in harm. However, adopting this approach requires a significant reallocation of resources and a more global response to the challenge. It also shifts the response to one that is only about strengthening domestic law enforcement.

That is not easy to achieve: much aid and donor assistance in the area of organised crime is now channelled in ways that seek to reduce the threat to the donor country alone. These are understandable, but often short sighted, ways of combatting a problem that is acting as a 'slow burner.' The extent of the damage to these countries becomes public in spurts in the form of high profile cases or damaging incidents, while the overall impact of the illicit economy is to erode governance and development over time.

Issues such as urban violence, while spoken of as key policy challenges, seldom received significant resources, often because they occur in marginalised and impoverished communities. But these 'bleeding sores' require resolution if effective stability and development are to be attained in many parts of the world.

It is an oft-mentioned conclusion to speeches at global policy fora on organised crime that we need a unified and global approach. Without a clear and simple policy framework, such as that proposed in the drug policy discussion to 'reduce harm,' we will not be able to craft a truly strategic response to organised crime.

Competing Interests

The author has no competing interests to declare.

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