
POLICY COMMENTARY

Will Regulating Drug Markets Help Governments to Better Control Organized Crime?

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Few expect illegal drug markets to completely disappear in a world of legally regulated psychoactive substances, but it is likely that the regulation of currently illicit drugs would significantly challenge the business model of today's drug trafficking organizations. This article examines if and to what extent governments can expect to profit from regulating illicit drugs in terms of their control over organized criminal activity. It argues that, especially among proponents of drug market regulation, expectations about the impact of regulation on organized crime control might be too high. Regulation might create opportunities to better fight organized crime, but policy-makers are likely to be confronted with a range of sometimes uncomfortable choices in dealing with this new situation. If drug market regulation will result in better control of organized crime is likely to depend on what decisions policy-makers will take.

Keywords: regulation; illicit drug markets; policing; organized crime control; drug trafficking organizations

Introduction

There is hardly any doubt that regulating drug markets would substantially challenge the business model of criminal groups currently profiting from their strategic position along the supply-chain for illegal drugs.¹ However, whether this would also provide governments with an advantage in keeping organized crime more in check remains hypothetical.

Among advocates, the expectations of the impact of regulation on organized crime are high. The Global Commission on Drug Policy, for example, argues that 'It is unrealistic to envision other as-yet untapped criminal opportunities that could absorb the organized crime resources operating a \$320 billion illegal drugs market,' and that 'There is a perceived qualitative and moral difference between working in drug markets, where the trade is mutual and consenting between buyer and seller, and other forms of organized crime... which are intrinsically violent and exploitative' (GCDP 2018: 32–33).

Emerging evidence, indeed, suggests that cannabis regulation has a crime-reducing effect, at least in the U.S. and in some parts of Europe (Dragone et al. 2018; Carrieri, Madio & Principe 2019). However, this commentary argues that more pessimistic scenarios of the impact of drug market regulation on organized crime could be plausibly envisioned for each of the three areas that advocates argue are key to the disempowerment of drug trafficking organization through market regulation (see for example GCDP 2014: 23–25; GCDP 2018: 29–34).

I do not suggest that the political goal of regulating drug markets should be abandoned. This commentary serves as a reminder to policymakers that expectations created by unrealistically optimistic assumptions are easily disappointed.

¹ For reasons of simplicity, this article uses the terms "organized crime groups" and "drug trafficking organizations" to describe a very heterogeneous set of actors involved in the global illegal drug supply-chain. How organized crime should be defined remains subject to a long-standing, unresolved debate. See, for example Paoli and Vander Beken (2014).

Regulation and illegal income from black markets for drugs

When it comes to the question to what extent drug market regulation will reduce the volume of the current illegal market for drugs, a look at the research on illicit tobacco markets—a product that shares crucial features with markets for plant-based, currently illegal, drugs—offers some interesting insight. Despite being a legal product, it is estimated that about 11 percent of the global demand for cigarettes is supplied from irregular sources.

Contrary to illegal drugs, a considerable part of this global irregular supply for tobacco is or was sourced by legal companies (Reuter & Majmundra 2015: 40; Joossens & Raw 2012: 231; Ross 2015: 28), with some of the governments where these companies are (or were, respectively) located having done few things to curb the illicit trade. In the highly regulated tobacco market, market regulations have been shown to create incentives to circumvent them (Reuter & Majmundra 2015: 42–43). This is the case for taxes (Joossens & Raw 2012; Joossens et al. 2015) as well as for non-financial market rules (Reuter & Majmundra 2015: 47–48). Tobacco companies as well as illegal cigarette producers have incentives to exploit regulatory differences among jurisdiction. Organizations operating illegally serve as enablers of this trade by offering clandestine services such as, for example, the smuggling of legally produced cigarettes into other jurisdictions (Merriman, Yurekli, & Chaloupka 2000; Ross 2015).

In a world in which drugs are regulated, governments that lack other significant means of income could be tempted to turn a blind eye on business activity that contributes to the persistence of illegal drug markets, too. Under the assumption of the absence of a fully implemented global drug market regulation regime and, reflecting current trends in cannabis regulation, it is likely that regulatory differences between (and probably even within) countries will persist as different countries will implement drug market regulation at different speeds and intensity. Differences in the capacity to do so might be especially pronounced between highly developed countries and others. Unless smuggling networks linking jurisdictions with different regulations can be defeated, these differences will create incentives for organized crime to remain involved in the illicit drug trafficking business. In the case of drug market regulation, compared to tobacco markets, this might be further complicated by a recently observed trend of increasing poly-drug trafficking by organized crime groups (EMCDDA & Europol 2016; Hughes et al. 2016). It is likely that regulation will not only move at different speed in different jurisdictions, but also when it comes to different substances. The business opportunities for clandestinely operating services providers specializing in drug smuggling will likely be manifold even in a world in which drugs are (more or less) regulated.

Furthermore, experience from the tobacco market and, increasingly, cannabis regulation in the U.S. and beyond suggests that policy choices are crucial for the remaining illicit markets for legal, highly regulated products (see, for cannabis, for example Kilmer & Pacula 2017; Cerdá & Kilmer 2017). After all, drug market regulation will create drug producing companies. Their economic, and hence political, power and impact will look differently depending on which regulatory model will be chosen by governments. Unless they are state-owned, they will attempt to defend their interests with political means.

From a policymaker's perspective this creates an important trade-off that must be addressed. Letting such companies taking part in policymaking carries the risks of lax, potentially harmful, regulation. Excluding them is likely to result in more robust regulations; but it is also likely to increase the volume and profitability of black markets.

Regulation and popular support for drug trafficking organizations

Some drug trafficking organizations draw on support of local populations to sustain their operations (see, for example, Skaperdas 2001; Aguirre & Herrera 2013). This is especially the case where organized crime links a labor-intensive illegal economy with a global market (Felbab-Brown 2010, 2017).

While not all state-organized crime relations are confrontational (Barnes 2017), and not all popular support for them is voluntary (Norman 2018), this provides governments with a dilemma: attempts to suppress illegal economic activity can trigger processes of de-legitimization of governments and legitimization of criminal and political actors challenging state power (Felbab-Brown, 2010). How governments act when confronting drug trafficking organizations will at least partly shape to what extent citizens affected by their actions will feel supported by these governments (see, for example, Fisher & Meitus 2016) and might support them in regaining influence in areas currently controlled by non-state actors basing their power on illegal activity.

This dilemma is not simply vanishing in a world in which drug markets are regulated. Removing the illegal drug economy and, therefore, weakening organized crime would not necessarily and directly result in improved state legitimacy in regions in which drug production and trafficking is an important source

of income. Criminal groups can offer farmers in remote regions of drug producing countries access to a global market because profit margins in illegal markets are extraordinarily high. In a regulated market, these advantages are likely to be drastically reduced by more sophisticated markets rules probably designed to keep prices high, demand low and drug producing companies small, putting the willingness of drug companies to include remote producing regions in their supply chains into question. If governments can (and would be willing to) compete in this market by subsidizing drug production in remote areas remains questionable.

Whether regulating drug markets will help governments to be viewed as more legitimate actors in regions where citizens previously felt neglected, therefore, depends on two factors. First, if non-state actors competing with governments for influence over populations in these regions are not able to develop alternative sources of income, their ability to exert control could indeed be significantly reduced in some places. Second, and more importantly, governments would still have to find ways and means to support and economically develop these regions to be seen as a viable alternative to criminal groups.

Regulation and fighting organized crime

There is a body of literature arguing that organized crime is resilient enough to survive even significant law enforcement interventions and changes in its business opportunities (see, for example, Bouchard 2007; Bakker, Raab & Brinton Milward 2011). Even if drug market regulation would weaken and disempower them, it would be naïve to assume that most drug trafficking organizations would simply disappear. The idea promoted by some advocates that regulating drug markets will free law enforcement resources currently used to police the lower tiers of the market seems more promising. Freed resources could be redirected to the fight against most dangerous and societally harmful organized crime groups (see, for example, GCDP 2014).

However, to achieve this, important obstacles remain. First, from a strategic point of view, an area of concern is the ability of law enforcement organizations to reform in general. Organizational barriers are preventing police forces to effectively reform independently from how drugs are regulated (see, for example, Skogan 2008). Under these circumstances, it seems unlikely that freeing law enforcement resources will necessarily translate into a better and more effective fight against organized crime. This process would have to involve careful planning and a long-term perspective on law enforcement reform.

Second, even if resources were reallocated effectively, there is no universally accepted set of indicators, which measures harms of organized crime (Hamilton-Smith & Mackenzie 2010; Zoutendijk 2010; van Duyne & van Dijk 2007; Tusikov 2011). Although promising attempts to measure the harms caused by drug trafficking organizations have been made (Paoli, Greenfield & Zoutendijk 2013), the recent trend of increasing poly-drug trafficking (EMCDDA & Europol, 2016) might further complicate answering the question of which drug trafficking organization should be targeted first. Under such circumstances, the decision whom to target first would remain a political, as opposed to a technical, one.

Third, designing and deploying effective strategies against organized crime groups is a challenge itself. What 'effectiveness' means in controlling organized crime remains as unclear as how it could be measured. Castle (2008) identified at least fifteen different measurement schemes for the impact of law enforcement interventions on organized crime in various enforcement agencies around the world. All of them come with their own methodological problems, which put their usefulness as objective scales of measurement into question.

Even if it could be agreed that, for example, the collapse of an organization crime group serves as a measure of success, it remains questionable if this could be used to design effective enforcement strategies. There is a body of literature which suggests that 'decapitating' drug trafficking organizations (or drug trafficking organizations, more generally) is unlikely to successfully stop trafficking groups from operating (Bichler, Malm & Cooper, 2017; Bright et al. 2017) or even to reduce violence associated with them. A study on strategies targeting the top-tier of organized drug trafficking members in Mexico, for example, came to the conclusion that successful interventions could reduce violence, but that the effects are only temporary and that a decapitation only reduced violence when leaders were arrested (as opposed to killed) (Phillips, 2015; Calderón et al. 2015).

In any case, the positive effects of drug market regulations on fighting and controlling organized crime cannot be expected to come about 'automatically'. While it is likely that policing resources would be freed by drug markets regulation, what is known about law enforcement and law enforcement agencies suggests that it remains questionable if these resources could be used to fight the most dangerous and harmful remaining drug trafficking organizations or other organized crime groups without further political effort. If governments want to fully benefit from drug market regulation when it comes to organized crime control,

they should also invest more resources in better understanding which policing strategies and tactics are effective in countering drug trafficking organizations and how law enforcement agencies can be reformed sustainably.

Conclusion

It is not implausible that drug market regulation will contribute to a decline of organized crime. But, as this commentary has argued, policymakers should be aware of the role their decisions will play in shaping how remaining illegal drug markets, organized crime groups and organized crime fighting will look like under these new circumstances.

The volume and organization of remaining illegal drug markets will at least partly be shaped by how governments decide to regulate legal markets for drugs. If drug trafficking organizations will lose most of their popular support once their major source of income dries up, we will depend on the ability of governments to seize the opportunity to win back currently neglected citizens. And whether law enforcement resources freed by winding down the war on drugs will be put to good use from a perspective of organized crime control depends on whether law enforcement agencies are given the means and opportunities to reform in way that enables them to develop more rational approaches to fighting organized crime.

For the time being, in a world in which drug markets are still mostly illegal, governments should take the opportunity to learn as much as possible from the existing and emerging regulations schemes for cannabis in several U.S. states, Uruguay and Canada. Many of the arguments in this article are, for obvious reasons, based on assumptions about, analogies to and extrapolations of existing situations. Reality will prove some of them wrong.

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Competing Interests

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