

Re-evaluating organised crime and illicit markets: a path towards a new response

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Introduction

Since the early 1990s, the world has witnessed a boom in what is now referred to as “organised crime”, a phenomenon that accelerated even more dramatically in the new millennium as globalisation gained pace. But effective action to combat this phenomenon has been lacking, and policy discussions have proceeded glacially in the face of rapid criminal change and innovation.

This chapter argues that the debate around the expansion of global organised crime and criminal markets and the associated response have been hamstrung by several definitional and conceptual challenges regarding “organised crime” and “illicit markets”. In part, this struggle with terminology dates back to the very beginning of a coordinated response to organised crime, when states famously could not agree on a definition of “organised crime” during the negotiations for the United Nations Convention against Transnational Organised Crime (UNTOC). This reflected a wider uncertainty about the nature of the new criminal challenge: until the convention was opened for signature and ratification in the early 2000s, terms such as “organised crime group” and “mafia” were seldom used or understood outside a few national jurisdictions.

Two decades later, arguably the opposite problem exists: terminology which once applied to a few countries has now been applied to many, with some countries embracing and others rejecting the “organised crime” label for different forms of illicit behaviour and markets. “We have a serious challenge”, said one senior crime intelligence official from South Africa, which scores badly on the Global Initiative against Transnational Organized Crime (GI-TOC) Global Organized Crime Index and is widely regarded as having an organised crime problem, “but we don’t have an organised crime problem like with mafias”.¹

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1 Interview with Mark Shaw.

Unfortunately, she couldn't be further from the truth. Even some academics who have built careers studying mafias in developed countries find it hard to widen their lens for the multitude of criminal and mafia-like formations that are now present elsewhere. The extent and diversity of criminal activity and the difficulty in describing that activity have resulted in some confusion among policymakers in multiple places and to some extent clouded the debate on solutions. Much of the terminology around what may be termed the 'global illicit' is often confusing, and different phrases are used to describe an array of challenges.

Furthermore, the debate over illicit markets and organised crime is characterised by a relatively high degree of fragmentation, in part because expert analysis is generally required to understand individual markets, with the result that the overall concept of organised crime and the principles of regulating the illicit are rarely discussed amongst policymakers. This is one of the reasons that this volume is important, seeking as it does to provide an analysis of multiple illicit markets within the same framework. This is especially vital since, as this chapter will argue, a comparison of harms between the various illicit markets is essential in prioritising the response.

What is clear is that the time is right for a rethink on how to deal with illicit markets and organised crime. The global policy response to organised crime is largely being built on the foundation of UNTOC, but that foundation is shaky. Due to political disagreement, the convention has taken years to gain traction, with a (weak) review mechanism only agreed quite recently.² There is currently little or no data to provide any accurate indication of whether or not the convention has achieved any real impact on the ground. While international cooperation is almost always urged as the prescription to fight organised crime at every UN meeting on the subject, the available evidence suggests that, in the main, it is only like-minded (generally democratic) states that achieve effective cooperation, although there are notable exceptions. There is still no clear global strategy to respond to organised crime, and meaningful state cooperation to respond to cross-border criminal activity is much less widespread than is often assumed.

While the global response remains disjointed, criminal markets are thriving. Drug production and use³ globally are at an all-time high. Over

2 The Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto was launched in October 2020 (UNODC n.d.-a).

3 There are many challenges in collecting accurate data concerning drug use, and UNODC urges caution in comparing estimates across different years, but there is

the last few years cocaine, heroin and methamphetamine production have all increased significantly.⁴ The COVID-19 pandemic did little to disrupt drug markets, which have proved to be highly resilient, in part due to decades of enforcement action that have removed all but the most effective and dynamic actors (EMCDDA 2021; Shaw and Reitano 2021). Exploitation of and illegal trade in environmental commodities are also now probably more widespread and extensive than at any previous time in global history.⁵ Illegal fishing fleets are decimating global fishing stocks (GI-TOC 2019), and the rate of illegal forestry clearance was perceived to have increased significantly in some places during the pandemic.⁶ While illegal trade in wildlife slowed in the first months after the pandemic hit, a level of trade did resume (and online trade notably increased), and there were several large seizures in later months – including 626 kilograms of

evidence of an increase. According to UNODC's 2021 World Drug Report, between 2010 and 2019, the global number of past-year users of any drug was estimated to have increased from 226 million to 274 million. This represents a rise of 22 per cent, although UNODC cites global population growth as partially responsible for this rise, with the number of people aged 15–64 increasing by 10 % (UNODC 2021: 19).

- 4 Global cocaine manufacture hit record levels in 2019, despite decreasing areas of coca under cultivation, while opium production has been consistently high at around 7,400 tonnes per year since 2018 (there was a dramatic spike in 2017, when opium production reached 9,000 tonnes). Seizures of synthetic drugs soared 12-fold between 2001 and 2019, with a 30-fold increase in amphetamine-type stimulants in the same period. Cannabis seizures have declined since 2015, but the quantities of cannabis seized far outstrip seizures of other drugs, and it remains the most widely cultivated drug. The decline in seizures may also reflect changing law enforcement approaches to cannabis (UNODC 2021: 51–56).
- 5 According to a 2016 report by UNEP and INTERPOL, environmental crime had increased dramatically over the course of a few decades to become the fourth-largest crime market, with an annual growth of 5–7 % in the previous decade (with some sub-sectors witnessing a rise of 21–28 %). In 2018, the World Atlas of Illicit Flows estimated that environmental crime (including illegal exploitation and theft of oil) was the third-largest illicit market, after drugs and counterfeit goods, and the largest conflict finance sector (Nellemann et al. 2016; Nellemann et al. 2018).
- 6 There were reports of increased local illegal logging in the Congo Basin and Sulawesi, Indonesia, but it should be noted that Indonesia's overall primary forest loss rate decreased for the fourth year in a row. Globally, there was a 12 % increase in forest loss during 2020 compared to 2019, the vast majority of which occurred in Brazil. However, using a three-year trend analysis (which overcomes uncertainty of data in year-on-year analysis) shows that levels in 2020 were still in fact declining from highs in 2016 and 2017 (see Chandra 2021; Mbzibain et al. 2021; Weisse and Goldman 2021). For an analysis of the lack of a macro-level link between the pandemic and deforestation, see Wunder et al. (2021).

ivory in Cameroon – although seizures overall were well below previous years (TRAFFIC 2020). Yet this drop in seizures is not necessarily good news, as fears have grown that traffickers have been stockpiling for the time when restrictions of movement ease (Abano and Chavez 2021; Maron 2021).

The numbers of smuggled migrants also dropped during the early stages of the pandemic (INTERPOL 2020), but the widespread economic impact of the pandemic (together with conflict and poor livelihood prospects) will only incentivise more to move. Higher barriers – be it from states' fear of contagion or exclusionary nationalism – have also provided opportunities for criminal networks to hike the price they charge for those eager to move. Cybercrime has also matured into a fully fledged criminal market, driven by the exigencies of life under the pandemic when millions of people spent more time online, providing a ready market for fraudsters and scammers. There has also been a rapid expansion in sophisticated ransomware attacks – 2020 saw a 485 % increase in reports of ransomware attacks compared to 2019 (Bitdefender 2021) – with many targeting major companies, including national infrastructure. In May 2021, Colonial Pipeline, which supplies almost half of the US East Coast transport fuel, paid nearly US\$5 million after a ransomware attack forced the company to shut down its pipeline (Shear, Perloff and Krauss 2021).

As these developments show, the threat from organised crime is dynamic and rapidly evolving. To counter this threat effectively, we need to dispense with the prevailing orthodoxy over how to tackle illicit markets and return to first principles. The calls for a change in approach have grown louder in recent years, yet efforts to pioneer more innovative approaches have often been hamstrung by insufficient funds or lack of political will (or both).⁷ The focus on the ground in many places remains informed by the old notions of stringent prohibition and heavy prison terms, an approach perhaps best epitomised by the US-led war on drugs, which despite its mounting number of critics continues to magnetise – and some would argue warp – attention and debate, centring the organised crime focus on drugs, violent cartels and dramatic interdiction efforts. Yet despite the trillion dollars spent over the past five decades, there is a general consensus that the war on drugs has not achieved its aims – and many would argue

7 To give one example, Rio's Police Pacification Units, launched in 2008, were intended as a hybrid form of on-the-ground policing and community-outreach programmes, but the latter suffered from a lack of resources from the very beginning (Clavel 2017).

that it has made the problem much worse (Farber 2021; Shultz and Aspe 2017).

The failure of such approaches should spur us to reconsider the concepts on which they are built. To this end, this chapter sets out to examine some of the conceptual challenges in the debate about “organised crime” – namely illegality, illicit markets and actors, and harms – and by doing so make an argument for changing the focus of our efforts to respond to illicit markets.

Legal, illegal and the spaces in between

At the heart of all discussions about the illicit is the notion of illegality, yet it is perhaps under-appreciated how nuanced, varied and even arbitrary a concept this is. An activity, such as trade in a particular commodity, is only illegal if a state makes it so, not because it is innately illegal. And even once declared illegal, that declaration is not universally absolute, but bound to the extent of a state’s jurisdiction – a commodity or activity’s legal status can vary from place to place across state borders. For instance, it may be illegal to poach or exploit a commodity in one place but quite legal to sell it in another. Similarly, legal products can form part of an illegal flow, such as precursor chemicals which are used both in the production of illicit drugs and in the legal production of other substances.

This interplay between what is “legal” and what is “illegal” is a big part of all illegal flows/markets and their regulation. This is especially noticeable in the case of grey markets when illicit flows (for example of people, gold or timber) converge with and blend into legal flows. (Alternatively, an initially legal good can become illegal when diverted from a legal supply chain.) If the laundering/diversion is successful, it may be impossible to tell the difference between a commodity that was illegal at one point (due to its production or transit, for example) and a legal one. Grey markets can arise in cases where a formerly licit product has been banned, restricted or heavily taxed, as seen in 2018, when the Kenyan government banned the production and sale of Kenyan charcoal – a vital source of fuel for many people. With demand continuing, illicit domestic production continued and was laundered into legal imports (and also smuggled flows). It is for this reason that a series of policy responses such as certification schemes to identify the sources of products have been implemented, with varying degrees of success.

The Kenya example demonstrates two things: first, the rapid rise of an illicit grey market when a commodity suddenly changes legal status,

and second, how criminals can exploit differences in the legal status of a commodity between different countries (in the case of Kenya, the fact that charcoal imports from Uganda and Tanzania were still legal). This second point also reveals a major challenge in attempting to build a unified global response towards organised crime: put simply, countries often cannot agree on what is legal and what is not and how they should cooperate to regulate illegal flows.

This is because how countries respond to illicit flows is a political issue before it is a law enforcement issue – for Kenya, the decision to ban domestic charcoal production was motivated by environmental concerns, but other states may be more pragmatic. This is particularly true in cases where the illicit economy is a significant source of livelihood for domestic populations, whether in the production of illicit goods (for example in artisanal mining or logging) or the long-standing engagement of historically nomadic groups in the illicit transit trades of people and drug smuggling across the Sahel. International pressure to crack down on such activities is likely to be resisted by the states in question, given the lack of viable legitimate alternatives. These political interests are one reason why so much effort and debate in international fora is expended on determining what should be prohibited (the endless discussions about what drugs to put on what lists, for example, or what species should be on the CITES appendices/IUCN “red list”).⁸

Of course, simply declaring something illegal does not make the problem go away, and can in fact make it very much worse. From the criminal’s perspective, enforcement increases the risk and thus the cost of moving illegal commodities, but ironically, that may mean more profits for organised crime. (This may be due to several factors: criminals may pass the cost of moving illicit goods on to consumers, with a healthy

8 The International Union for Conservation of Nature (IUCN) Red List of Threatened Species is an inventory of the global conservation status of thousands of flora and fauna species and is used as a source for amending the three appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES was adopted in 1973 to regulate international trade in certain species, and the convention’s three appendices determine the various levels of protection and control applied to the trade of any given species. (Appendix 1, for example, includes species threatened with extinction, where trade is only permitted in exceptional circumstances.) The categorisation of flora and fauna species in these appendices therefore has real-world impacts for the 183 parties of CITES, shaping trade and conservation efforts. Of course, the listing of a species in a restrictive category does not eliminate demand, which may then be met by illicit actors.

percentage for themselves; illegality and interdiction limits supply, which may drive up prices; and restricted supply may also lead to products such as drugs being adulterated or cut with cheap filler agents, boosting profit margins (National Research Council 2010).⁹) Declaring a market illegal also removes its activities from public view and makes it much harder to monitor and research.

If we recognise that legality and illegality are essentially arbitrary, stated terms, how can we coordinate a global response? The answer has to lie in reconfiguring the debate – not around whether some commodity or activity should be declared illegal, but on the basis of a more comprehensive discussion on the balance of harms. Doing so in the wake of a pandemic, where government decisions have been based on exactly such calculations (the harm of the spread of the virus against the economic damage caused, for example) provides an opening for rethinking our approach to illicit markets.

Effective calculations of the harms that result at different points along illicit flows may ultimately be the best way to get states to engage with the real consequences of illicit markets; if states have compelling evidence, then perhaps good policy will follow. They might be less inclined to prohibit, and more disposed to address structural drivers. We will return to this theme, but given the complexity of what is and is not considered illegal, it is necessary to first define what is regarded as a criminal market or flow and what we mean when we talk about “organised crime” actors.

Illicit markets and criminal actors

The term “organised crime” is often used to describe both illicit flows (or markets) and organised criminal groups (or actors), but it is important to distinguish between the two. The terms “illicit markets” and “illicit flows” refer to the provision or the movement across borders of commodities or services that states designate by law to be illegal. The concept can also be widened to suggest that “flow” also means delivery of illicit activities across borders – if you accept that definition, we could also talk about virtual flows through the delivery of criminal activity using the transport systems of the internet. There are of course also local criminal markets, sometimes disorganised, which do not provide any such service or commodity but

9 For an analysis of how prices respond to supply-side interdictions, see National Research Council 2010, Chapter 2, ‘Markets for Drugs’.

which are merely predatory, such as robbery, kidnapping and extortion. While the generally local nature of such activities sets them apart from other forms of illicit flow, they often form part of the ecosystem of illicit markets that entrenches criminal governance. (Extortion, for example, is often ‘justified’ by criminals as the provision of security that the state is unable to provide, and sophisticated actors like the Yakuza may even become part of the crime-regulatory apparatus itself (Bonello, Reitano and Shaw 2021: 18).) And polycriminality is increasingly a factor: organised crime groups engaged in illicit flows may also work with local criminals who engage in extortion, racketeering and violence (UNODC n.d.-b).

An enormous diversity of commodities and services are traded in criminal markets, including people, weapons, illicit drugs, wildlife products and non-renewable resources such as oil and gold. Criminal markets and their operation are associated with increased evidence of criminalised governance, state protection of illicit activities and rent seeking, as well as violence within and between criminal groups and against communities. Criminal markets also generate a demand for a wide range of services: political protection, legal support, financial services for laundering funds, document fraud and the contracting of violence, amongst others. Consequently, illicit markets create an ecosystem of interests around them. It is little wonder that those who attempt to disrupt illegal markets face significant resistance.

The geography of the illicit for almost all commodities can be divided into three types: the point of production or supply; the trafficking or transportation of the illicit commodity in question (including through zones or countries of transit); and the markets where it is consumed. Europe is generally seen as primarily a consumer market, but the infrastructure of global trade – air travel and container shipping in particular – has helped illicit products reach an ever-increasing number of countries. The explosion in the production of synthetic drugs has also dramatically shifted which states are producer, transit and consumer locales, with production sometimes taking place in the same country as consumption. Changes in global synthetic drugs markets in the coming years will only serve to increase the number of drug production locales, diversifying supply and fuelling local markets. Growing virtual markets are also opening up new opportunities for advertising and coordinating the movement of illicit commodities on a global scale, as well as creating new forms of virtual crime.

Yet discussions of this “globalisation” of illicit flows and markets can overshadow the role of the local context. Local criminal groups with their connections to government and local networks and knowledge are

much better placed than external criminal actors to ensure the control and regulation of local criminal economies. This is one reason why, despite the general policy statement that “organised crime has gone global”, more granular research suggests that criminal groups don’t travel well, or at least that a set of specific conditions must be fulfilled for them to do so. What has travelled well are illicit markets and flows, which have indeed gone global, in the sense that demand is equally found in developing economies and developed ones. In that sense, it is useful to see illicit markets and flows as a chain which various actors are attached to (or extract rents from). These actors engage in agreements, but the lack of trust between actors and the challenges of enforcing informal contracts mean that most criminal markets are inherently unstable.

The degree to which criminal flows are transnational and control is local is well illustrated by one subset of data in the GI-TOC organised crime index, which shows a weak correlation between the presence of criminal markets in countries across the globe and the presence of foreign actors (GI-TOC 2021: 115). Why would that be the case? The short answer is that foreign actors find it difficult to break into local criminal markets – particularly where local organised crime is dominant – and so generally are unable to maintain an extensive local presence.

Instead, foreign criminal actors generally seek to do deals with local criminals and often occupy the position of intermediaries between local and foreign groups. In the early 1990s, Italian brokers such as Roberto Pannunzi began stationing themselves in Colombia to coordinate cocaine shipments between the Medellín and Cali cartels and the Italian ‘Ndrangheta and Cosa Nostra. While the mafia footprint in Latin America grew larger in later years (with the ‘Ndrangheta in particular mobilising Italian migrant populations in Latin America to set up front operations), independent brokers remained important, in part because they did not raise the kind of attention that a major European mafia presence in Latin America would attract. Crucially, brokers understand both supply- and demand-side contexts: Pannunzi was among the first to realise in the early 1990s that the profit margins from selling cocaine in Europe were vastly greater than those from heroin. Later, brokers also leveraged Europe’s efficient transport infrastructure (including container ports) – and the fact that European law enforcement presence and capacity

in Latin America is far lower than that of the US – to supply a reliable flow of cocaine to the various European trafficking groups.¹⁰

For the majority of criminal markets we need to dispense with the idea that there is a ‘farm-to-fork’ model of organised crime, with a single organisation dominating the trade along the entire chain.¹¹ Instead, a range of brokers, intermediaries or violent entrepreneurs are present at different points along the chain, performing functions that essentially push the product along while drawing profit from doing so. Given that trust is in short supply in many of the transactions along illegal commodity chains, cheating and threatening others (stealing commodities, extracting rents and threatening and carrying out violent acts) are the language or signals of business. Only in the most settled criminal markets – where one group may dominate part of the production, supply or sales chain – is violence reduced.

We also need to expand our definition of what constitutes a criminal actor. The stereotype of the drug dealer on the corner or mafia don may dominate the popular perception, but in reality there are a wide diversity of actors involved in managing criminal enterprises (and thus those involved in what we term organised crime), including legal companies, militia groups, organised gangs and criminal networks.

Criminal actors particularly thrive in conflict zones. The GI-TOC organised crime index highlights the strong correlation of organised crime with countries in conflict and fragile states, as reflected in the high rankings of the Democratic Republic of the Congo, Colombia, Myanmar, Mexico and Nigeria (the top five countries affected by organised crime) (GI-TOC 2021: 18). In many places, the distinction between criminal actors and conflict actors is not clear-cut. In an important new study of organised crime and separatist movements, Danilo Mandić describes how the line between crime and war often blurs, with “[m]embers [of organised crime groups] often simultaneously serv[ing] in armies, militias, or other armed formations” (Mandić 2020: 26).

Criminals in conflict zones are well placed to exploit shortages in commodities and services during times of war and are often keen to maintain

10 This discussion of the evolution of cocaine trafficking is drawn from McDermott et al. (2021).

11 Albanian cocaine networks come close to this end-to-end model for drugs, buying cocaine from cartels in Latin America, arranging shipment and then distributing the drug through Albanian retail networks on the street in places like the UK, although they are not involved in growing coca or manufacturing cocaine (McDermott et al. 2021: 33).

the chaotic status quo. In a recent study of how mass atrocities occur, Kate Ferguson argues that “criminal markets that may predate the application of sanctions are primed to benefit when sanctions start to bite. When these criminal networks are also irregular armed groups, the vested interest in prolonging violence and crises becomes one [...] of financial gain requiring only long-term, complex solutions” (Ferguson 2020: 204). Once peace is achieved, it is highly likely that these groups will have cemented their influence in society and be able to wield real influence over the reconstruction of the state. This was seen in the 1990s during the Bosnian wars, when criminal actors grew powerful through weapons and fuel smuggling and became deeply influential actors in the post-conflict state (Andreas n.d.; see also Glenny 2009).

One consideration when talking about “organised crime” groups is how much of the total activities of the group is related to the management of a criminal market. A “pure” organised crime group is likely to be 100 % focused on obtaining illegal profit, while a legitimate company may engage in both legal and illegal activities (and if the laundering of a product like fish or wood is involved these may be closely related). A militia group or paramilitary force may only be identified as partially involved in criminal activities, usually to fund their activities and often in the form of taxing the movement of illegal goods. Very few serious organised crime groups are now only involved in illicit markets. Most have used their dirty money to buy political influence, licit businesses and vast holdings of assets. By laundering their income into the global financial system (which has aided this through either insufficient regulation or unscrupulousness), these groups have merged with the underworld.

At the other end of the spectrum, it is important to understand that not all actors involved in illicit flows are associated with organised crime groups. Many criminal markets draw on the expertise and labour of people in informal economies, who hover between legal and illegal work. For example, the illicit gold market has at its base literally thousands of people toiling in difficult conditions, and drug cultivation involves small-scale farmers. Such groups of people may often be targeted by the authorities, as they constitute easy game and offer fast results. Crops can be destroyed and illegal miners rounded up, stats can be compiled, but in general illicit flows remain largely unaffected. (The huge coca eradication campaign in Colombia, for example, has had little impact on longer-term cocaine flows, or indeed coca cultivation, which has sporadically risen despite such attempts (Felbab-Brown 2020).)

For such people, illicit work is sometimes the only viable option for earning a livelihood, and removing that livelihood risks plunging them

further into economic hardship. Policy in such cases has to focus on bringing such actors into the space of a more regulated legal economy. In the case of illegal gold miners for example, this would mean giving them the opportunity to sell their production to legal as opposed to illegal brokers. There are many ways to regulate grey or quasi-illegal actors without undermining livelihoods.

The role of state actors in criminal markets is also complex. The a priori assumption is that states act to curtail and/or regulate criminal markets. The reality, depending on the context, is that state actors are often deeply embedded in criminal activities and serve as important protectors of some criminal actors. While this is a wider debate in its own right, state attempts at enforcement may, by default or design, protect or favour some actors over others, the best example being the protection of informers within the criminal community – informers whose intelligence is often targeted against opposing criminal groups or networks.

At the extreme end of this relationship, the state may collaborate with criminals. In the context of organised crime, “state capture” refers to the phenomenon of the criminal predation of the state and the protection of criminal markets by the state, and is a critical part of understanding how criminal markets are sustained and how they benefit political elites. As well as driving corruption and distorting law enforcement, such state capture can also put independent media and civil society actors – often the last channels through which information on the activities of criminal groups and their corrupt protectors can be made public – in the firing line. It is little wonder then that civil society voices are being challenged in countries across the globe, including through state actions and criminal violence. Our own work in Africa indicates a decline in the space in which independent media voices and community activists can operate – a consequence of increasing state control and state capture.

The phenomenon of state capture constitutes the ultimate form of control around an illicit flow. The state apparatus essentially drives out the criminal competition to occupy the key position in regulating who can benefit from the criminal economy. The figures from the GI-TOC organised crime index are sobering in this regard, with state-embedded actors assessed as having a “significant or severe influence on society and state structures” in 112 out of 193 states (58 %). In other words, the majority of states (or at least state actors) are critical vectors drawing profit from global criminal flows. But even such state capture does not reduce the necessity to keep the focus on flows as the primary target for disruption, rather than actors. If flows are reduced, or reduced in value, those who rely on them to dispense patronage or extract rents will wither on the vine.

If we recognise that flows are the issue and actors merely serve the flows, we can start to move away from an antagonistic crusade against a criminal “enemy” and instead work out how to curtail demand and divert those actors involved in illicit production into licit business. The focus must be on disrupting a supply chain phenomenon, not taking down individual gangs/mafias/cartels, which will only be replaced by others – sometimes along with severe policy blowback. In 2006, recently elected Mexican President Felipe Calderón launched a ‘decapitation’ strategy (with US assistance) aimed at capturing or killing drug-trafficking kingpins. It worked, with 22 of the top 37 kingpins removed by 2012 (Beckhusen 2012), but also led to a fragmentation of the big cartels (which had maintained a semblance of harsh order) into hundreds of smaller factions,¹² each of which violently asserted itself in an attempt to gain turf and market share, with the Jalisco New Generation Cartel (CJNG) in particular grabbing headlines for its extraordinary brutality. Murders, kidnapping and extortion all skyrocketed (New York Times 2016), and of course, the drug markets remained intact.

Evaluating multi-market harm: a new approach to anti-crime policy

How a commodity or activity is designated as illicit is theoretically determined by a policy discussion as to the harms that would be caused by the legal trade in that commodity or activity. In theory, that perspective should be weighed with the harms of suppressing a particular market through state interventions such as law enforcement and regulation, especially as these harms are often severe. In the last ten years, action to contain illicit markets and criminal groups has proven to involve some of the most prolonged and deadly forms of violence associated with organised crime.

In reality, policy processes are often more confused than that, contain bureaucratic inheritances from the past, political grandstanding, moralising and stereotyping and often generate sets of institutional interests which make even slow change challenging. Uncreative policymakers often have an automatic default position that suggests that organised crime is about drugs, or that legitimately registered companies cannot be criminal groups. And for the most part, our assessment of the real harms done by criminal markets is poorly conceived or badly distorted. In the drug de-

12 In 2021, the Mexican consulting agency Lantia estimated that there were more than 400 gangs operating in Mexico (Chaparro 2021).

bate, for example, the term “harm reduction” has been deeply polarising. In this context the focus is on reducing harms to drug users by ensuring that responses are managed by the health sector as opposed to the criminal justice system, but some states with a strict prohibitionist approach viewed attempts to move drug control away from law enforcement as enabling crime. The term “harm reduction” became a dirty word in some quarters, and it is only recently that it has been possible to use it in UN consensus-driven resolutions.

Measuring the extent of harm as a result of criminal markets should be a priority for researchers, but this will be difficult to achieve. The harm caused by organised crime and criminal markets is multifaceted, having both direct and indirect impacts. This includes staggering levels of violence, with parts of several cities around the world having homicide rates that surpass those of war zones. It also encompasses severe environmental damage, deaths from drug overdoses and severe disruptions to economic activities. It will also be important to trace harms along the line of illicit flows to gain a full-spectrum view of the damage caused. Illicit flows to Europe, for example, may drive wars in Africa or on its periphery or reduce biodiversity and forest cover. In 2020 and again in 2021, allegations arose that Swedish homeware company IKEA had sold furniture made from wood linked to illegal logging in Siberia and Ukraine (Earthsight 2020; Earthsight 2021).¹³

While current systems to measure harm from organised crime are primitive, they do offer an important prism through which to view responses to illicit markets. Most importantly, they should be used to determine the priority and (by implication) the resources that should be brought to bear on different aspects of the wider criminal economy. The foundation for a discussion of harms caused by individual criminal markets should be determined by, amongst others, the following questions:

To what extent is the harm an existential crisis for people? That question may sound dramatic, but several criminal markets fit the bill in this regard, most notably illegal fishing and forestry crimes. Organised criminal markets around resources such as sand for construction and water may also constitute existential threats to parts of humanity in future.

13 In its response, IKEA asserted that its wood was legally harvested.

To what extent is the harm a symptom of a failure of responses to deal effectively with the market itself? Not all criminal markets are violent, but some, most notably drug markets under specific conditions of criminal competition, are extraordinarily violent. In such contexts the bulk of resources or policy thinking may be targeted at the wrong thing: in this case drug trafficking or drug dealing without creative responses to violence.

Is the harm caused as a result of state and community responses to the illicit market – or lack of such responses – and is it outweighing the harm caused directly by the market itself? This is the question that has long confronted the ‘war on drugs’, but it may equally apply to other markets. In the last decade, thousands of migrants and refugees attempting to cross the Mediterranean Sea have resorted to human smugglers, who have routinely sent them aboard overloaded and unseaworthy vessels – a practice which has resulted in thousands of migrant deaths. At times, such tragedies have catalysed a more empathetic response and increased calls for reform, yet efforts to tackle the main driver of the smuggling market – the dearth of avenues for legal migration – have been stymied. Interdiction remains the default position, with those intercepted or rescued often returned to unsafe contexts,¹⁴ while those who do reach Europe are often held in overcrowded and unsanitary camps in legal limbo, despite their refugee status (UNHCR 2020).

While this chapter is not intended to provide a detailed response to these questions, there are several points that may be useful to make in passing in order to stimulate discussion on issues of prioritisation around the threat that the global community faces from organised crime.

Threats from organised crime that are regarded as existential to humanity should arguably be those that are addressed most comprehensively and with the greatest allocation of resources. Several criminal activities (illegal fishing, forestry, waste dumping, etc.) which have (or ultimately will have) extreme environmental consequences and which at present only attract a paltry and under-resourced set of responses should by this rationale be pushed to the front of the queue. It is also worth emphasising that cyber-crime increasingly constitutes an existential threat to patterns of economic and social activity, and potentially a threat to democracy itself. Attacks on infrastructure and social services will become increasingly common and

14 In 2020, 11,891 migrants were intercepted/rescued and returned to Libya (IOM Libya 2021).

target developing countries more extensively, in part because developed countries will over time be able to secure some of their infrastructure and institutions. And in a new age of geopolitical competition, some cybercrime networks have state links.

Based on this rationale, drug markets, given that the harms caused to citizens are in part a consequence of the state response itself, should be downgraded in seriousness, with fewer resources being provided to address interdiction and much more to address the health consequences. Also, much clearer thinking is required on how they can be regulated in the first place. Calls to modernise the international drug control system have risen in recent years, but while there have been significant developments in, among others, Portugal (which decriminalised the possession and consumption of drugs in 2001) (Ferreira 2017), Mexico (where the legalisation of cannabis is pending final approval from the Senate) (BBC 2021) and even the UN (Tennant, Collins and Eligh 2020), the focus of such efforts remains overwhelmingly on cannabis, with the debate over cocaine and heroin largely deadlocked.

The rise of new psychoactive substances (NPS) poses arguably the biggest regulatory challenge, not least because it is still unclear how to categorise them in the first place: in the words of a 2017 study, “defining psychoactivity is conceptually fraught, with great consequence for the scope of the prohibition” (Reuter and Pardo 2017: 25). Further challenges arise through the ease and speed with which these new compounds can be created (as of August 2020, more than 1,000 individual NPS had been reported, UNODC 2020: 10) and enter and leave the market, together with the fact that some (such as opioids in the US) were originally created as legal alternatives to illicit substances (indeed, some may remain legal when prescribed) (Peacock et al. 2019). Faced with this dizzyingly dynamic threat, the traditional system of drug control – in which the UN body tasked with deciding which compounds should be scheduled meets only annually (UNODC n.d.-c), and compound classes cannot be scheduled – requires fundamental overhaul.

A new approach

As with so much else, COVID-19 provides an opportunity to critically reflect on the discussion on illicit markets and organised crime. But, significantly, the pandemic is also clearly driving a wider period of instability that is greatly strengthening criminal actors in many places around the world. And while the assumption is that these changes may end when the

pandemic has weakened its grip, there is no guarantee that this will be the case. A period of sustained social and political change may be upon us.

What does that mean for policies against illicit markets and organised crime? Four interrelated things:

The need for a global strategy that moves beyond law enforcement: The current response to illicit markets and organised crime remains fragmented and unsuccessful. All illicit markets continue to grow, and state responses for the most part, while perhaps constraining further growth, have been unable to reduce the growth. One of the reasons for this lack of success is that there is, despite UNTOC, no effective and agreed upon framework to confront illicit markets. While this will be difficult to achieve in light of political and geostrategic differences, there is a strong argument for seeking to develop a more strategic response – and one which moves beyond what are clearly unsuccessful law enforcement responses. Focusing on harms – especially harms that transcend national borders – may provide a means of more accurately assessing the impact of illicit markets, disrupting illicit flows and disempowering criminal actors.

Understanding that state actors are key vectors in criminal economies: The surface debate on organised crime often assumes a clear divide between state responses to organised crime and the operation of criminal markets. In many places, nothing could be further from the truth. From the funding of political parties and interests to the protection of some actors by state security personnel and the licit economic interests that develop around them with connections to state actors and regulatory decisions, government institutions are key vectors of influence within criminal markets. One of the major challenges in building an international consensus on organised crime is the incorporation and reformation of compromised state actors, as those left out in the cold will not only continue to maintain criminal economies within their own borders, but may also fuel those further afield. Such countries may also become safe harbours for increasingly mobile transnational organised crime networks.

Better measures of harm to prioritise action: Our ability to determine both direct and indirect harm from criminal markets and organised crime is poorly developed. No country has developed a sophisticated model for doing so in order to target state responses effectively. The result is predictably a focus on older markets (drugs largely) where

there are established institutional bureaucratic interests. For many, the response to the fallout of the pandemic should be prioritised, and yet the impact of crime is no less pervasive. Approximately three-quarters of the world's population lives in areas of high criminality (GI-TOC 2021: 12–13) – and there is no vaccine for organised crime. The longer it is left unattended, the worse the problem will become.

More innovative research: Our understanding of illicit markets has grown substantially over the last decade. There is, however, much more to do. Central to this must be more sophisticated processes of data collection (commodity pricing and protection fees across all markets being two examples) and more work on the political economy of different illicit markets. Without such work, the policy discussion will remain trapped in narrow and often case-by-case law-enforcement-style discussions, which, while important, provide only a narrow window into the power and reach of illicit flows.

Greater policy experimentation: For too long the world has adhered to the same narrow spectrum of responses to deal with an ever-wider range of illicit markets, yet the time may now be right for a varied and imaginative approach that deals with each market on its own terms. Regulation, not enforcement, may well be the best way to limit the harms stemming from many illicit markets, although this will be uncharted territory for many, and electorates must be won over with clear and data-supported arguments, as public acceptance of a new paradigm is crucial. More collaborative efforts between state and non-state actors, including the private sector and civil society, may also help generate more holistic, comprehensive and impactful responses. The effectiveness of such an approach was seen in South Korea during the pandemic, where approximately one-fifth of all government initiatives were in formal partnership with civil society; involvement of civil society with the ministries of Foreign Affairs and of Agriculture, Food and Rural Affairs in the implementation stage reached very high levels (90 % and 87.5 % respectively) (Jeong and Kim 2021, as cited in Carnegie Civic Research Network 2021). Targeted state collaborations for specific markets may also be an effective method, as was the case with the counter-piracy coalition in Somalia, which was a rare example of an illicit market being effectively closed down, and the closure sustained, although security measures in themselves cannot be sufficient and indeed may even be counterproductive.

We have reached a critical phase in the discussion of criminal markets. Currently we are building our response on a set of old paradigms, largely shaped by how we have responded to drugs, and based upon the assumption that states are good actors. There is no evidence that this is the case. Most significantly, the lack of success in the fight against many illicit markets, which are going from strength to strength, demonstrates that we are on the wrong path when it comes to tackling organised crime in all its myriad guises.

We need a new way of thinking that is underpinned by a re-examination of the basic principles behind our current conceptions of organised crime. Declaring something illegal has consequences, many of them not planned for, and in a globalised world, state prohibition can easily be circumvented. And yet this is not to dismiss illegality as a useful and necessary tool: the harms caused by human trafficking, forced labour and violent crimes (among others) are real and serious, and there can be no room for such activities in a just society. Rather, we need to assess whether our determinations of illegality are fit for purpose and accurately comprehend the contemporary criminal landscape. The seductive myths of omnipotent kingpins and arcane criminal codes have long dominated public perception, but awareness is growing that crime as a system is driven by the same forces as licit business, and indeed, the line between the two is frequently blurred. In this light, we need to appreciate that flows create criminal actors and not necessarily the other way around: if we reduce the profits from the flows, criminal incentives will decline. But most importantly, we need to reassess the relationship between crime, harm and response. At this juncture in our history, we must seek to protect the vulnerable – whether that be people, infrastructure, wildlife or the planet’s resources – from the devastating consequences of crime, while doing all we can to dismantle the contexts that allow crime to thrive.

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