



CRU Policy Brief

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Crime and error: why we urgently need a new approach to illicit trafficking in fragile states

Summary

Transnational organized crime has boomed in some of the poorest and most fragile countries in the world, prompting the international community into renewed efforts to devise a response. So far, however, the results have not been impressive. Murder rates remain stubbornly high along the cocaine highways of Central America, West African crime expands unabated, and in Central Asia, the trade route for heroin from Afghanistan remains under the control of armed groups and opaque political interests.

This brief seeks to explain the fundamental errors and misconceptions which ensure that the fight against global crime, while scoring ever more arrests and interdictions, has failed to make headway against trafficking through fragile states. Although progress has been made in understanding how security and justice systems work, Western donors still need to confront the endemic weaknesses of institution-building, the extraordinary allure of the global criminal economy, and the ways that politicians and business systematically collude with traffickers. The brief concludes by listing a series of new policy areas that could underpin a new approach. Above all, these emphasize reducing the receptivity of fragile states to criminal enterprise, staunching violence, and ensuring the gradual build-up of trust, probity and clean business.

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Policies and strategies to pin back the spread of international criminal groups and illicit markets are claiming ever larger resources and attention from Western governments. The escalating murder rates and state corruption of Central America and Mexico, or the opaque movements of traffickers and non-state armed groups in West Africa and the Central Asian republics bordering Afghanistan, represent major sources of regional instability and potential geopolitical risks.

A more pervasive reason for this growing interest can be found in the shifting characteristics and intensity of armed conflict. Despite the intra-state disputes and wars that have erupted in the aftermath of the Arab spring, the total number of major armed conflicts

appears to have stabilized at a relatively low level, with civilian casualties estimated to number around 50,000 a year – an historic low. But this global tally conceals more than it reveals. So-called “fragile states” are highly vulnerable to the re-emergence of armed violence in the shape of crime, and in urgent need of new approaches to their predicament.

Crime and fragile states

Organized crime, however, remains an extraordinarily imprecise term to use in such a variegated set of countries. Even assuming that we have a tight definition of the phenomenon – emphasizing durability over time, a search for profits, and willingness to use force and corruption – there are

many different sorts of criminal culture and network. A hierarchical mafia organization can provide property and contract protection within illegal or semi-legal markets, as the criminologist Diego Gambetta famously argued for the Sicilian mafia; or it can pioneer a transnational cocaine trafficking empire with domestic political ambitions, as Pablo Escobar did in 1980s Medellín.

Illicit trade can turn exceptionally violent, as it has in the conflict between Mexico's cartels, or become systemically aligned with the activities of armed groups, as shown in the production and export of diamonds in Africa, or coca cultivation in Colombia. It can be the work of enterprising individuals, like the small-scale drug traffickers along the Argentine-Chile border, known as "narco-ants." Alternatively, illicit trafficking can be a serene, quasi-state business, of the sort that prevailed in Mexico until the 1980s. In the case of smuggled cigarettes, trafficking has been tolerated and encouraged by governments, notably in the wartime Balkans, and according to anthropologist Carolyn Nordstrom*, even enjoys the complicity of multinational tobacco firms.

However, in the case of fragile or conflict-affected states, the international community's focus has invariably centred on the most violent and harmful forms of trafficking. Narcotics such as cocaine and heroin – estimated to be by far the most lucrative illegal commodity, making up 85 percent of the total transnational criminal trade of 125 billion US dollars according to the UN – are rarely produced in these countries, and consumption rates tend to be low. But the inviting possibilities offered by porous borders, underpaid officials and public indifference or consent make these ideal trafficking routes. On occasion, the market logic is irresistible: Tajikistan, the poorest former Soviet nation, happens to share a 1,500km border with Afghanistan, producer of 80 percent of the world's heroin. It is also a first stop on the way to Russia, the world's largest heroin consumer.

Tackling this vogue for the criminal exploitation of fragile, post-conflict environments requires a radically new way of thinking. Substantial progress has already been made in this regard. The more brutal and punitive approaches proffered against the poppy-farmers of southern Afghanistan, or the coca-growers of Bolivia under the misnamed Dignity Plan of the 1990s – both of them notoriously counter-productive – are being replaced by a more cautious approach that

does not eviscerate rural livelihoods. Policies have shifted away from the simplicities of crop eradication, extraditions to the US, and superior firepower (which is not to say these practices do not continue). New approaches to illicit trafficking in fragile states instead emphasize, at least rhetorically, international co-operation on law enforcement, strengthening of the judicial system and greater police awareness of how criminal networks operate.

The advances made in these fields are important, although results have often been disappointing. But in the specific case of poor fragile states, even limited progress cannot disguise fundamental errors in conception. The new security approach has reached its limits, first because it is acting on the least tractable part of the spread of illicit trafficking; and second, and most important, because its conception of the enemy is wrong.

Pulling different levers

International co-operation that aims to build a country's resilience to crime and corruption is itself confronted by strong countervailing winds in the international system. The spread of transnational crime hinges on two of these: the perverse incentives created by the prohibition of goods for which there is persistently strong market demand in richer countries, including drugs, rare timber and endangered species, counterfeit goods and prostitutes; and the ease with which a globalized trading and finance system allows for goods, licit or not, to be moved by sea, air and land, for money to be diverted and laundered, and for groups in remote locations to communicate in real time.

The most comprehensive assessments of international crime, whether from the United Nations Office on Drugs and Crime (UNODC), Europol or the US National Intelligence Estimate, concur that high profit margins in illicit trade and this leap in global connectivity are the primary reasons behind the boom in transnational crime. Whereas each affected country or region has its particularities, the overarching schema of criminal penetration, whether in the spread of narco-trafficking to West Africa or piracy off the coast of Somalia, is strikingly similar. Through physical and virtual connections to global economic capitals and final user markets, fragile states provide international criminal networks with the benefits of a local business platform where the threat of legal enforcement is minimal. As a result, some 50 percent of the estimated earnings from Somalia piracy, which

were thought to be around 70 million US dollars in 2009, reportedly ended up in the hands of foreign financiers and backers.

Concerted efforts to build up domestic capacity in security and justice systems are by far the slowest and most unreliable of the three ways to alter the equation of incentives and arbitrage in the global criminal economy. Softening the system of global prohibition, particularly through decriminalization of narcotics, would rapidly reshape market structures and flatten extraordinary criminal profits – albeit with unpredictable consequences for related criminal activities, such as protection rackets, kidnappings and capture of state resources, all of which tend to be violent and predatory. It is curious to note that the origin of drug trafficking in Ciudad Juárez, Mexico, can be found in the adaptation of smuggling networks that sought out new commercial avenues following the end of the US prohibition of alcohol.

Alternatively, if more systemic control over trafficking is demanded, imposing much tougher monitoring in ports and at borders – for example, by patrolling and fencing the 54 unmanned vehicular crossings between Guatemala and Mexico – and combining this with intensified prevention and more draconian treatment of demand in user markets, would certainly repress illicit markets over the short term. Again, however, history has shown that new controls will soon after be flouted if demand is not comprehensively reduced.

But the fact is that either of these options lies at the very limit of what is politically possible for Western democracies. The third approach, institution-building in countries affected by transnational crime, is much more palatable, yet also rather less consequential. We know from the work of Douglass North, Francis Fukuyama and other political scientists that institutions are highly resistant to change. Radical sociologists, such as Ernesto Laclau, maintain that institutions can evolve, but only in the aftermath of a significant political and populist transformation. Practical experience, meanwhile, suggests that well-intentioned plans to build stronger security and justice systems encounter numerous obstacles, and can rapidly degenerate in a hostile criminalized environment: counter-narcotic police forces established with US assistance in Mexico and Central America have been repeatedly corrupted, while Drug Control Agencies created by the UNODC in Central Asia have been hollowed out or intimidated by

political interference. Kyrgyzstan's was simply closed down by its president in 2009.

Misconceiving organized crime

Of the three levers with which the international community can alter the dynamics of transnational crime, it has chosen to operate on the slowest and most complex of all. This initial impediment is then compounded by the way in which organized crime is understood. Under a Manichean world view, heavily influenced by the culture of law enforcement and by the archetypes provided by Italian and Russian mafia, the target for action is not taken to be the phenomenon of transnational organized crime, but the existence of Organized Crime.

Through an almost unconscious or reflex use of caricatures, concepts and labels, and in spite of sound analysis, the international community upholds the belief that its universal goal, whether in developed countries or fragile states, is to target, combat and dismantle a cohesive entity made up largely of full-time professional criminals. For the UN, the aim with regard to organized crime is to “mobilize collective action against the growing and multifaceted threat.” The 2011 US Strategy to Combat Transnational Organized Crime is even more explicit, stating in its opening page that “Transnational organized criminals act conspiratorially.... They commit violence.... They attempt to gain influence in government, politics and commerce.”

Organized Crime has thus rapidly become the key malevolent actor in fragile and conflict-affected contexts: it corrupts states, buys politicians, spawns waves of violence, and undermines legitimate business. These common-sense statements of subject, verb and object are repeated in all contexts at which transnational crime is nowadays discussed. But this does not obstruct the fact that they are fundamentally misconceived representations of the way crime works in fragile settings.

The error of these conceptions can be understood in various ways. It is undeniable that certain dedicated criminals do play essential roles in assembling networks of trafficking through fragile states. This expansive wave of transnational crime can also involve deadly violence between cohesive, professional criminal groups – such as that which followed the Zetas intrusion into Guatemala from 2008, or the Sinaloa cartel's employment of sicarios (paid assassins) in Honduras at around the same time.

But it is a mistake to boil down the phenomenon of transnational crime in fragile states to the protagonism of a small number of dedicated criminal groups, and a strategic error to concentrate international co-operation on strengthening institutions solely in order to pursue and arrest these criminals.

Why is this so? Countries and regions that are heavily affected by illicit trafficking show a remarkable criminal resilience in the face of law enforcement – even in cases where the security system is working effectively. Mexico’s extreme violence can in part be put down to the impact of a counter-productive law enforcement strategy introduced in 2006 that has empowered the most violent actors and spread criminal activity, even to populous cities such as Monterrey and Acapulco. In Colombia, on the other hand, the rise of new criminal groups, the so-called *bacrim*s, has occurred in spite of a massive policy of social reintegration of former combatants, and a police campaign that has systematically targeted each new manifestation of organized illicit activity, with over 1,100 arrests last year alone.

The outstanding reason behind the resilience of organized crime and violence in both these cases, and in many others, is simply that the strategy to eliminate Organized Crime is muddle-headed. In the first place, the targeting of professional traffickers and criminals does very little to alter the fundamental market motives and opportunities that attract such groups, but instead enhances profit margins (by eliminating competitors), or at best displaces trafficking routes to a neighbouring country. “If these individuals are arrested and incarcerated, the activities continue, because the illicit market, and the incentives it generates, remain,” explains the UNODC.

However, the second reason is even more significant for future policy. Transnational crime is “sticky” in certain environments because it fits perfectly into a social, political and institutional groove that subsists over time. Although much research still needs to be done to identify the precise mechanisms and mores of the relationships that are established between professional criminal groups and local power-holders in politics and business, the evidence that has been accumulated so far in heavily criminalized territories – such as Petén in Guatemala, Tajikistan or Guinea-Bissau, or in around 200 Colombian municipalities under rising *bacrim* influence – shows that criminal activity is rarely forced onto local elites or publics, and

that these may in fact help to initiate or expand trafficking. These locals are not passive victims, but active collaborators. In extreme cases, new hybrid politico-criminal elites may even be the end result of this partnership.

If the presence of transnational organized crime is to be reduced, then the receptivity of these local environments to criminal enterprise must be systematically addressed. Targeting professional *mafiosi* alone, or regarding the local partnership as the effect of criminal coercion, mistakes the dynamic nature of the relationship. Organized crime in these environments forms one extreme on the continuum of informal practices and degraded institutional routines that are typical of fragile states. In participating in such illicit activity (or merely by tolerating it), the public figure, business person or security official is engaging in a mode of behavior that allows for political or economic accumulation. By doing so, he or she does not become exclusively “criminal,” or cease to be a politician or entrepreneur; instead, adaptive, context-specific and opportunistic use is made of an illicit business network that very often directly complements other licit activities (e.g. electoral campaign funding).

The key policy issue, therefore, is not how to “take out” these actors, but recognize how the criminal compartment of their behavior functions, and what can be done to minimize its size and importance.

A new policy agenda

Law enforcement remains an essential part of the battery of measures against organized crime, above all in developed countries and in sensitive border areas and transit points. But in fragile states or highly criminalized settings, reliance on security measures that aim to impose global regulations on prohibited goods can make little further progress. The weaknesses of this approach have already prompted a new focus on institution-building in security and justice. But even this strategy will fail unless it tackles with greater intellectual honesty the incentives facing local politicians, business and the public – not all of whom can be arrested and tried – and recognizes organized crime to be a rational behavioural modality, not simply a quasi-professional activity.

In short, the new agenda must pragmatically seek out areas of policy where the incentives to engage in organized crime, and particularly violent crime, can

be reduced, and engagement in licit activity relentlessly encouraged. None of this is easy. As discussed above, the systemic causes driving the boom in global crime appear for now to be immutable. Country-specific approaches, well-intentioned as they may be, cannot always resist the tidal movements of globalization and illicit profit-making, and institutions take a long time to build. However, a variable and flexible set of approaches that targets the extreme receptivity of fragile states to crime would at least seem more attuned to the real nature of the criminal threat.

Political incentives. Easy political gains from illicit campaign funding and strategic alliance with criminal groups at the local level may be impeded by legislation, such as a Colombian legal initiative in 2011, which aimed to punish national political parties proved to have candidates linked to illicit activity. Although the effects of this reform are as yet uncertain, there is a strong case to be made for limiting the prerogative of local constituencies and penalizing party HQs for tolerating local criminal partnerships. Furthermore, criminologist Federico Varese** has used the example of the Italian mafia's infiltration of municipalities to argue for keeping electoral constituencies as large as possible. Close monitoring of campaign funding, regular reporting on affected municipalities (and more extensive powers of central intervention), and rewards as well as protection for "clean" politicians, are other possible measures.

Security, justice and internal control. A reformed and effective security and justice system would clearly have the most significant effect on incentives to criminal behavior, yet the obstacles to institution-building in this area are immense. A viable medium-term strategy, however, would be to establish the knowledge circuits, good practices and resources needed to implement effective mechanisms for internal control and oversight in the security and judicial systems. At present, for example, a mere 20 percent of witnesses to murder in Jamaica report the crime, largely due to grave distrust of the police. Only once public trust is rebuilt through internal reforms can low rates of crime reporting in criminalized environments, resulting in extremely high levels of impunity for serious offences, be repaired. A very rapid increase in criminal complaints and prosecutions would also reshape the perceived interests of political and business figures, and undermine the more egregious sorts of involvement in illicit activities.

Countering violence. Several recent works have been devoted to the need to reorient security strategies away from counter-narcotics and militarized responses in violent criminalized environments, and towards a greater focus on harm reduction and human security. Although this is not relevant to all the cases in which organized crime has become entrenched – transnational trafficking is not always violent, and is often rather less so than protection rackets and other local crimes – there is no doubt that persistent, extreme violence, of the sort found in Central America and the Caribbean, has a toxic effect on public life, media freedom and political accountability. Reducing these levels of violence is a humanitarian imperative. Furthermore, extreme violence atomizes society and exacerbates the demand for extra-legal repression, broadening the leeway of security officers, politicians and business figures to collude with crime. Clear police and judicial criteria on targeting the most violent crimes would not halt all illicit activity, but it would set limits to the damage to democratic governance. Future international discussions on possible relaxation of drug laws, as promoted by Colombia and Guatemala, should also place overriding priority on reducing violence.

Cleaning up business. Of all the activities of organized crime in fragile settings, the most under-researched is its relationship with legitimate business. However, the multiple sets of overlapping interests, whether of drug traffickers owning numerous licit businesses, legitimate businesses making large profits in highly criminalized contexts, or businesses providing occasional help in transporting goods or laundering proceeds, clearly have a major effect on the sort of economic opportunities available in a country. In the absence of strong judicial action against this behaviour, donors should consider mapping business risks and adopting private sector support programmes in vulnerable areas, such as border communities where criminal collusion is rife and employment opportunities limited.

Coherence or context? Much of the thrust of the international system in its policies towards transnational crime has focused on achieving greater coherence between different institutions in response to the global expansion of trafficking. However, the approach outlined in this brief stresses instead the need for careful, close observation of the local environment, and sensitivity to what can be achieved through local institutions. Where these are weak or

corrupted, and where civil society offers no viable substitute for their work, an incremental approach based largely on incentives for local actors should be the imperative. While acknowledging the limits of any response, donors should strive to tailor programmes to each specific case.

Conclusions

A global economy that spans countries living at opposite extremes of wealth and development affords all manner of possibilities for criminal networks, above all those networks that aim to supply illicit goods for which there is demand in rich countries. Closing the borders is not a realistic option; nor is eliminating demand; nor, for the moment, is a drastic change to the stiff prohibitions regulating the drugs trade and migration, or to the lax rules governing small arms.

The effect of this illicit commerce on fragile states, many of which have only just emerged from civil war or transitions into democracy, has been acknowledged by the international community. At a time of fiscal constraint, financial resources are pouring into programmes aiming to prop up security forces and

judicial systems. With a few exceptions, the results have not been impressive: despite new prosecution services, new police forces, new academies and equipment, the countries of Central America have been locked into the world's highest murder rates.

Amending these failures depends on two crucial steps. As this brief has argued, the first involves recognizing the incentives that nourish collusion between local power-holders and criminal networks in fragile states. The second involves a new set of policies that would aim to take the shine off these partnerships. No programme within a country can resist the forces impelling the global criminal economy. But at least the harm to institutions and civil society in fragile environments can be significantly reduced, and the platforms for functioning security and judicial systems laid for the next generation.

* Nordstrom, Carolyn. 2007. *Global Outlaws: Crime, Money and Power in the Contemporary World*. University of California Press.

** Varese, Federico. 2011. "Mafia movements: a frame work for understanding the mobility of mafia groups." *Global Crime* 12:3.

ABOUT ...

The Clingendael Conflict Research Unit

The Netherlands Institute of International Relations 'Clingendael' is a training and research organization on international affairs. The Conflict Research Unit (CRU) is a specialized team, focusing on conflict-related issues in developing countries.

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