



CHATHAM HOUSE

MODERNISING DRUG LAW ENFORCEMENT

SEMINAR #2 REPORT

Context

On 16 September 2013 Chatham House hosted a day-long seminar in London as part of the “[Modernising Drug Law Enforcement](#)” (MDLE) project, led by the [International Drug Policy Consortium](#) (IDPC), with the participation of the International Security Research Department at [Chatham House](#) and the [International Institute for Strategic Studies](#) (IISS).

The project aims to examine new strategies for drug law enforcement that focus on beneficially shaping – rather than entirely eradicating – drug markets, and managing them in a way that minimises harms on communities. A series of commissioned reports and meetings attempt to provide useful guidance to law enforcement managers on how to develop strategies and tactics that are relevant to the challenges posed by 21st century drug markets.

The event, aimed primarily at law enforcement practitioners, was designed to discuss and promote new approaches to law enforcement and policing with a view to improving drug law enforcement strategies. Three reports were presented at the event:

- [‘Practical implications of policing alternatives to arrest and prosecution for minor cannabis offences’](#), by Geoffrey Monaghan and Dave Bewley-Taylor
- [‘Drug law enforcement and financial investigation strategies’](#), by Michael Levi
- [‘Drug markets, security and foreign aid’](#), by Virginia Comolli and Claudia Hofmann

All proceedings were held under the Chatham House Rule. This record aims to highlight the key themes and findings of the discussions.

1. Introduction

The first presentation provided an overview of the current international state of drugs and organised crime and the policy responses to the challenges, particularly in Europe. The drug trade is the single most significant problem in the world of organised crime, with half a million people believed to be involved in the drugs industry in Mexico; 3,600 listed gangs in Europe and over half of them involved in the drugs business. The drug market is also evolving, with a significant rise in new psychoactive substances notified through the EU early warning system: from 14 in 2005 to 73 in 2012.

The first presentation of the day noted the need for an increase in intelligence and analytical capacity in Europe, which was said to depend largely on the governments’ ability to manage data effectively. With the

rising amount of data available, there is a growing risk of ‘white noise’: most perpetrators of recent terrorist attacks were already on the system (e.g. Anders Breivik, Michael Adebolajo and Michael Adebowale), yet their crimes were not anticipated by law enforcement agencies. In addition, there is persistent reluctance across European countries to share intelligence.

Other challenges, as outlined in the [EU Drug Markets Report](#) (European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and EUROPOL, January 2013) include the increased use of the internet for selling drugs (which allows users to purchase drugs in a less personal way, while payment processes like Bitcoin help support this development), the diversification of transport routes (with complex channels and multiple entry points), activities (several drug trafficking groups are also involved in other illicit activities such as human trafficking) and means (a criminal organisation recently hacked into the computer system of a port authority to control the arrival of its own shipments), and the globalisation of the problem (groups have become increasingly heterogeneous: some have over 60 different nationalities in their membership).

It was highlighted that the aim of the law enforcement response to the drug problem should be to shape criminal markets in a way that minimises harm, increases opportunities to conduct operations and manages risk perceptions. Transnational coordination and information exchange is crucial in order to minimise potential ‘balloon effects’ (with problems shifting from one country to another). In this context, a UK withdrawal from the EU or an opt-out from law enforcement and security cooperation could give the impression that the UK is a safer place for criminal activity.

Crucially, the way law enforcement success is measured should be modernised. Amounts of drugs seized and numbers of traffickers arrested do not accurately reflect the realities on the ground and how safe communities and markets are. The UK Serious Organised Crime Agency (SOCA) has been at the forefront of efforts to refine performance metrics: ‘Success isn’t measured only by the criminal money and assets we seize. It also comes from the impact that seizure has on constraining criminal activity, undermining confidence, and the resulting reduction in harm’¹.

2. Practical implications of policing alternatives to arrest and prosecution for minor cannabis offences

Cannabis is the most widely used psychoactive substance in the world, with 180.6 million users worldwide. The drug has therefore dominated the law enforcement response. Since the 1970s, several local and national governments have introduced measures to decriminalise, depenalise, or generally relax laws relating to cannabis use. Most recently the states of Colorado and Washington in the US have passed ballot initiatives to allow for the creation of legally regulated markets for the recreational use of cannabis; and a bill in Uruguay is now on its way to becoming law – it proposes to allow registered cannabis users to buy up to 40 grams of cannabis a month from a pharmacist, and grow up to six cannabis plants at home or cultivate up to 99 plants as part of a ‘cannabis club’ with a minimum of 15 and a maximum of 45 members.

Potential benefits of policing alternatives to arrests include lower costs for police and courts, the reduced stigmatisation of users and encouraging users to enter drug dependence treatment. Moreover, research suggests that diversion from the criminal courts and criminal sanctions tends to reduce re-offending,

¹ ‘Myths and Misunderstandings’, Serious Organised Crime Agency: <http://www.soca.gov.uk/about-soca/how-we-work/myths-and-misunderstandings>

particularly in the case of young and ‘first time’ offenders. However there are also costs associated with changes in approaches, at least in the short term, relating to training, the preparation of publication of policy and guidance, the design of data capture systems and independent evaluation and monitoring.

Despite limited research evaluating the enforcement aspects of alternative models of policing, two key issues should be highlighted. The first one is the risk of net-widening. Alternative mechanisms to arrests and/or prosecution have created quick and effective means for police officers to deal with minor cannabis offences they might have previously ignored, thereby increasing the number of people exposed to the criminal justice system. A decriminalised yet more targeted approach primarily focusing on the 20% most problematic users can be considered an attractive alternative in this regard.

The second issue is discretion. While some senior officers may support calls for alternatives to arrests and/or prosecution for minor cannabis offences, some lower level officers may continue to arrest cannabis offenders despite guidelines. In New York, the annual number of arrests for cannabis possession quadrupled between 1996 and 2007 despite the 1977 law explicitly seeking to eliminate arrests for cannabis possession and the associated stigma. Performance indicators and financial incentives appeared to encourage officers to arrest more people. Discretion can also specifically lead to increased discrimination – a recent report by [Release](#) shows that in the UK ethnic minorities are more likely to be targeted than white people: for instance black people are 6.3 times more likely to be stopped and searched than white people, and that once arrested, 78% of black people are charged, compared to 44% of white people, despite similar levels of consumption amongst black and white people. In addition, there should be appropriate guidance and training to understand what particular cases may require the resort to arrest and detention – for instance in Portugal and Switzerland individuals can be arrested if they are unable or unwilling to present evidence of identity and residence. Diverting offenders to education and rehabilitation (following the law enforcement model regarding traffic offences) could also prove beneficial.

The Netherlands is currently reviewing its cannabis policy. They are notably considering measures to class cannabis with a higher than 15% THC as a hard drug. The fact that 60-90% of cannabis produced in the Netherlands is exported is said to be a growing concern there.

In Switzerland, cannabis possession of up to 10 grams is now an administrative offence that can be sanctioned with a fine, which often means less work for the police. The measure was experimented in several cantons before a national law was put in place.

In Colorado and Washington, legalisation of cannabis will not mean the end of law enforcement. For example, law enforcement is needed for alcohol – a regulated substance – in the US, to ensure that regulations relating to alcohol (e.g. sale, licensing, manufacturing, etc.) are respected and to manage behaviours and the impact of alcohol use.

3. Drug law enforcement and financial investigation strategies

During the second session, it was noted that if money laundering is the keystone of organised crime, then financial investigations might be enough to dislodge that keystone. However, there is very little evidence on how to address this issue. In the USA, senior officials noted that research on this issue might play into the hands of opponents who would criticise the lack of policy impact. However, financial investigation strategies

are overall perceived to be very complicated, which either deters governments from trying or makes the process fail at some stage.

There is an expanding category of financial crime (i.e. related to drugs, crimes, terrorism financing, corruption, tax fraud), but little cooperation between different fields as to what works and does not. There are different measures available, including individual deterrence (i.e. preventing individuals from getting large amounts of cash, accessing credit, or opening accounts – i.e. incapacitation), group deterrence, and community support to defend the rule of law. Asset recovery seems to be the predominant approach. However there are several downsides, including the relatively little impact the asset recovery approach has on the problems; and the fact that it targets low-hanging fruit instead of broader systems and challenges. Other potentially useful approaches include using financial mechanisms to disrupt the most harmful networks, such as criminal financial analysis and post-conviction. Additionally, financial investigations can be useful in that they may reassure the public, but their impact is often misunderstood and under-researched.

In the UK, like in many other places, there has been little success in financial crime investigations. The cost of crime in the UK is used to justify asset recovery approaches but there are disagreements on how much could be re-invested back into legitimate services, e.g. healthcare, education but more crucially law enforcement services.

Since the beginning of the financial crisis banks are increasingly being held to account, while they were previously criticised for not doing enough to highlight suspicious activities and for their reluctance to take action. Banks now have reporting mechanisms in place, and face the possibility of losing their license or even facing individual charges if they do not report problematic behaviours. Such mechanisms are also spreading to other sectors linked to financial crime, e.g. car dealerships, real estate agencies, high-value jewellery. Taxation is also a very important tool that is often ignored.

However progressive law enforcement should go beyond these measures and improve their overall understanding of how criminal groups are structured and operate (e.g. role of families, ethnicity, business models and financial structures).

In Mexico, corruption between the government and the cartels began in the 1960s when the government reportedly made a deal with the cartels for them to pay a secret tax to the government. However, in the 1980s and 1990s the cartels built partnerships with large cartels in Colombia and therefore started to bring in large amounts of money. Thanks to their new status, the cartels tried to gain control of the state, either by buying off or putting in place public officials.

The violence erupted in 2003 under President Fox, as the state reportedly began to protect just one cartel – the Sinaloa cartel. Three things have made the cartels powerful in Mexico: the government that has protected them; the businesses and banks who launder their money; and the markets. Therefore it is not enough to just speak about tackling money laundering. Criminal businesses create many legal companies through which they ‘clean’ the money. In return these businesses also donate to political campaigns.

There seems to be a juxtaposition of different worlds in this field: the reality on the ground is marked by people dying, like in Mexico; current financial investigation strategies are very complex and even law enforcement officials consider them insufficient and ineffective; however at the UN level there is a widespread perception that money laundering is the key strategy to ending organized crime.

4. Drug markets, security and foreign aid

The third session explored the challenges posed by current approaches regarding the linkages between counter-narcotics policies, security assistance measures, and foreign aid. Three main problems were highlighted regarding the current approach. First, foreign assistance from EU countries regarding drug policies often focuses on reducing the flow of drugs to Europe instead of the situation and needs on the ground. Second, the strategies have focused on short-term law enforcement measures at the expense of long-term, comprehensive solutions including public health and development measures. In several regions of the world, including West Africa and Afghanistan, the focus on countering terrorism has hampered progress in other areas such as development. Third, the law enforcement approach has led to a steep increase in prison population – In Mexico 60% of the overall prison population, and 80% of the female prison population, are incarcerated for drug-related crimes.

For example, US funding for Colombia (over US\$8 billion between 2000 and 2011) has been largely devoted to law enforcement, despite a recent increased focus on development. However, Plan Colombia has had mixed results. While the security situation on the ground has improved, opium production has shifted to neighbouring countries, in particular Peru and Bolivia, and the shift in trade routes has had destabilising effects. This clear ‘balloon effect’ has led Juan Manuel Santos and other Latin American presidents to challenge the status quo and call for a regional process to discuss all options – the review was conducted by the Organization of American States (OAS) and its [findings](#) were published on 17 May 2013².

In Afghanistan, counter-narcotics policies can be considered as an afterthought of military intervention, which is partly due to the fact that counter-narcotics policies and counter-terrorism policies are difficult to reconcile. Conducting research based on UN data, Julien Mercille from University College Dublin found that 75% of drug-trafficking revenues have benefited Afghan government and law enforcement officials – important partners of the ‘war on terror’ - and only 3% have gone to the Taliban. In addition to this key challenge of corruption, there has been only limited investment in public health and the country’s political economy.

Russia identifies Afghan opium production as a threat to global peace, and has thereby put in place the Rainbow 2 plan to focus on eradication, intelligence exchange, the sanctioning of landlords on whose territory poppies are grown, training for the Afghan police and the donation of thousands of weapons including 20,000 Kalashnikov assault rifles. More recently, Rainbow 3 was set up in Central America and includes special training for Central American police forces, and greater judicial cooperation to tackle narcotics and other forms of illicit trafficking, corruption and kidnappings. There are concerns in Central America regarding the increased involvement of Russia in the region – in the words of one participant, ‘the last thing we need is more weapons’.

Five political dilemmas were highlighted during the session. First, foreign aid expenditure needs to be justified to domestic citizens. Second, decreasing law enforcement efforts may cause a political backlash. Third, hybrid approaches based on both harm reduction and supply reduction are still at an early stage. Fourth, recipient countries often lack the institutional capacity to understand and negotiate the conditions attached to aid. Fifth, drug-related foreign aid is often seen as a useful political tool – by donor countries to

² On 30-31 July, Chatham House organised the European launch of the OAS Report on the Drug Problem in the Americas. For more information, visit the Drugs and Organized Crime project page: <http://www.chathamhouse.org/research/security/current-projects/drugs-and-organized-crime>

export their drug policy, and by recipient countries as a way to divert attention from their own domestic failures.

The issue of foreign aid is often ignored by the growing international debate on drug policy. A number of elements should be considered, including the separation of foreign aid from domestic goals; increased coherence between supply reduction policies and local needs; and more focus on socio-economic policies, including activities focused on health and development and long-term projects related to these objectives.

5. Conclusion

The last session focused on the Americas, a region in which there is growing consensus on the need to re-evaluate existing drug policies, as illustrated by the recent OAS report on the Drug Problem in the Americas. OAS Member states are indeed dissatisfied with current drug policies, and agree on the need to break the taboo. There is also a shared acceptance that the drug problem is not just a law enforcement issue, but primarily a social and economic issue, and one that requires regional and international cooperation. While OAS countries agree that current approaches are not all broken, there is a need for some more flexibility in drug policy, including potential decriminalisation of drug consumption and alternatives to incarceration.

However, numerous challenges remain. The American hemisphere accounts for 8% of the world's population but approximately half of its homicides, kidnappings, and incarcerations; and among homicides, 80% are carried out with firearms, as opposed to 40% on average worldwide. There is a significant disconnect between governments and the public. Populations across the region are still reluctant to support more liberal drug policies. Being tough on crime is an easy argument to be made politically – and one that is likely to be part of the electoral campaigns of the 14 elections across the region in 2014. However evidence shows that more progressive responses to the drug problem are needed. Change will be difficult, given the considerable suspicion and mistrust between the people and their governments, and between various government agencies. In addition, a significant security business is now in place, marked by overpopulation in prisons, and a significant role played by private security companies who often intervene to compensate for weak, inefficient and corrupt police forces.

Views are therefore often entrenched and change is likely to take time. However there is growing recognition of the ineffectiveness of old approaches, the lack of progress, and the need for a change towards alternative policies including a renewed focus on the rule of law instead of law enforcement. In other words, equal access and protection by the law; more proportionate, effective and accountable law enforcement strategies focusing on the reduction of harm created by the drug markets; public health and socio-economic policies; and education reform, which necessitates close cooperation with non-government actors, including local organisations and the media.