

## Modernising Drug Law Enforcement

### Report 2

# Focused deterrence, selective targeting, drug trafficking and organised crime: Concepts and practicalities

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#### Key Points:

- Organised crime and illicit economies generate multiple threats to states and societies. Yet, goals such as a complete suppression of organised crime may sometimes be unachievable, especially in the context of acute state weakness where underdeveloped and weak state institutions are the norm.
- Zero-tolerance approaches to drugs and crime, popular around the world since the late 1980s, have often proven problematic. They have often failed to suppress criminality while increasing human rights violations and police abusiveness.
- Focused-deterrence strategies, selective targeting, and sequential interdiction efforts are being increasingly embraced as more promising law enforcement alternatives.
- These approaches seek to minimise the most pernicious behaviour of criminal groups, such as engaging in violence, or to maximise certain kinds of desirable behaviour sometimes exhibited by criminals, such as eschewing engagement with terrorist groups.
- Focused-deterrence and selective targeting strategies enable overwhelmed law enforcement institutions to overcome certain under-resourcing problems.
- How 'the most pernicious' group is defined or what is designated as 'the most harmful' behaviour to be deterred can vary. The broad concept is to move law enforcement forces away from random non-strategic strikes and blanket 'zero-tolerance' approaches against lowest-level offenders, and toward strategic selectivity to give each counter-crime operation enhanced impact.
- Whether to focus selective interdiction on high-value targets or the middle layer of criminal groups is importantly related to whether incapacitation or deterrence strategies are privileged and what focus and objective they have.
- The focused-deterrence approaches and prioritised-interdiction concepts are to a great extent derived from Boston's fight against violent gangs in the early 1990s. Similar strategies, as well as transnational versions of focused-deterrence approaches, have been adopted elsewhere in the world.
- Factors that impact the level of effectiveness of focused-deterrence strategies and selective interdiction include the political context, the level of pre-existing intelligence and enforcement capacity of the government, the government's capacity to concentrate resources, the size and scale of criminality, the complexity of and power distribution in the criminal market, and the structure of criminal groups.
- Careful monitoring of the effectiveness and side effects of these strategies is necessary, although evaluating their effectiveness presents difficult inferential problems and threats to validity.

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## Introduction

Extensive criminality and illicit economies generate multiple, at times intense, threats to states and societies – to their basic security and safety, and to their economic, justice, and environmental interests. High levels of criminality, particularly criminal violence, tend to eviscerate law enforcement capacities as well as the social capital and organisational capacity of civil society and its ability to resist organised crime. Especially in the context of acute state weakness where underdeveloped and weak state institutions are the norm, goals such as a complete suppression of organised crime may be unachievable. But even in countries with strong law enforcement institutions, law enforcement efforts to suppress the incidence of criminality, particularly of transactional crimes, such as drug trafficking (as opposed to predatory crimes, such as homicides) have at times not succeeded and have generated negative side effects and externalities, such as human rights and civil liberties violations and overcrowded prisons.

Zero-tolerance approaches to crime, popular around the world since the late 1980s, have often proven problematic. They have produced highly unequal outcomes and often greater police abusiveness. Particularly, in the context of weak law enforcement institutions and high criminality, zero-tolerance approaches have mostly failed to reduce crime, while generating new problems. Allocating resources to essentially repressive programmes frequently takes place at the expense of investigative capacity. Critically, the lack of prioritisation of crimes and criminal groups often diverts police focus from the most violent and serious offenses and most dangerous criminal groups.

Focused-deterrence strategies, selective targeting, and sequential interdiction efforts are being increasingly embraced as more promising law enforcement alternatives. They seek to minimise the most pernicious behaviour of criminal groups, such as engaging in violence, or to maximise certain kinds of desirable behaviour

sometimes exhibited by criminals, such as eschewing engagement with terrorist groups. The focused-deterrence, selective targeting strategies also enable overwhelmed law enforcement institutions to overcome certain under resourcing problems. Especially, in the United States, such approaches have produced impressive results in reducing violence and other harms generated by organised crime groups and youth gangs. Such approaches have, however, encountered implementation difficulties elsewhere in the world.

This report first outlines the logic and problems of zero-tolerance and undifferentiated targeting in law enforcement policies. Second, it lays out the key theoretical concepts of law-enforcement strategies of focused-deterrence and selective targeting and reviews some of their applications, as in Operation Ceasefire in Boston in the 1990s and urban-policing operations in Rio de Janeiro during the 2000s decade (See Box 1). Third, the report analyses the implementation challenges selective targeting and focused-deterrence strategies have encountered, particularly outside of the United States. And finally, it discusses some key dilemmas in designing selective targeting and focused-deterrence strategies to fight crime.

## The logic and difficulties of zero-tolerance, undifferentiated targeting, and resource dispersion of anti-crime policies

Under ideal circumstances, police forces would be responding in a uniform and standardised way to all criminal groups participating in the same type of illicit economic activity. In order to prevent corruption and capture of the law enforcement apparatus by one criminal group or the development of political linkages among certain criminal groups, political parties, and the state,<sup>1</sup> and to ensure equitable and accountable application of rule of law, the

state's law enforcement forces would respond to any criminal activity and target all criminal groups. According to this model, a policy of differentiating among criminal groups or responding less harshly to some illegal economies could encourage the spread of anti-social values and undermine the internalisation of the rule-of-law values.

Such logic is at the core of one of the driving concepts of criminal justice developed in the United States over the past thirty years, the so-called "broken windows" theory.<sup>2</sup> This approach holds that controlling crime requires dealing with even minor crime disturbances, in order to communicate to society and potential offenders that a space is being effectively monitored and that police do have the capacity and will to enforce the law. This theoretical concept has underlain New York City's aggressive policing approach even to minor offenses since the early 1990s – even though its intrinsic effectiveness as well as comparative effectiveness with respect to other policing innovations and methods (such as problem-oriented policing and crime mapping) have been hotly contested among scholars.<sup>3</sup> In many Latin American countries, especially in reaction to public outcry against the rise of crime, the concept of aggressively responding to all crime was adopted and took the form of *mano dura* ('strong hand') approaches. Among other measures, *mano dura* policies criminalised membership in youth gangs, on the assumption that this would discourage gang membership and street crime and reduce organised crime as well.<sup>4</sup>

Yet the aggressively-combat-*all*-crime approach has proven ineffective in the Latin American context. Indeed, elsewhere around the world too, zero-tolerance approaches have often produced highly unequal outcomes, failed to reduce crime, and generated new challenges. The wide dragnets and extensive imprisonment of essentially low-level criminals for even minor misdemeanours often floods the prisons without an accompanying boost in the capacity of the corrections system. As a result, prisons become breeding grounds for hardened criminals.

Zero-tolerance approaches have frequently been accompanied by significant human rights violations and abusive policing practices, alienating communities from police forces. The allocation of resources to essentially repressive programmes frequently takes place at the expense of law enforcement's investigative capacity.

Critically, the lack of prioritisation of crimes and criminal groups often diverts police focus from the most violent and serious offenses and most dangerous criminal groups. An explosion of crime can quickly overwhelm police forces and result in their becoming apathetic or favourably-disposed to extrajudicial measures, including by vigilante groups and militias.

During intense warfare among criminal groups, such as experienced in Mexico over the past decade,<sup>5</sup> an undifferentiated targeting of organised crime groups can further intensify violence. By preventing the establishment of stable turfs and balances of power among the powerful criminal groups, it can perpetuate cycles of violence beyond the control of the law enforcement agencies. Unlike in Colombia in the 1990s, when Mexican President Felipe Calderón decided to take on Mexico's drug trafficking groups, the Mexican drug market did not have a 'bipolar' structure of being dominated by two most powerful groups, as was the case in Colombia. Instead, there were at least six large drug trafficking organisations (DTOs). Mexican law enforcement actions against the DTOs weakened them but did not clearly transfer power to either the state or another criminal group. Instead, the state's actions disturbed the balance of power among the DTOs and their ability to control territory and smuggling routes and project power to deter challengers. This lack of clarity about the balance of power on the criminal market tempted the DTOs to try to take over one another's territory and engage in internecine warfare. It also produced highly fluid and unstable alliances among them. Continuing hits by the state against the DTOs without much prioritisation also led to the splintering of the DTOs, giving rise to many new offshoots and

criminal groups. They too have been drawn to the fight to survive and expand their power and territorial control. Many have also diversified their operations into other illegal rackets and extortion. The groups may be smaller but the criminal market is far more violent.<sup>6</sup>

The larger the geographic area inflamed in violence, the harder law enforcement finds it to effectively respond. Spreading even considerable resources over extensive areas in a scattershot way fails to improve security in a lasting way in any area, and in a reactive uncoordinated fashion, law enforcement often ends up chasing the latest escalation of violence. The thinner resources are spread, the lesser any leftover deterrence capacity of law enforcement becomes.

## **Focused-deterrence strategies and selective targeting in law enforcement: Key concepts and evidence**

To overcome the problems of resource intensity, dispersion of resources, and police abusiveness, law enforcement forces can adopt an alternative approach – namely, selectively focusing on punishing or incapacitating a chosen criminal group or a chosen type of offender either in a particular locale or the entire country with the goal of deterring other criminal groups or actors throughout the system from engaging in the designated harmful behaviour.<sup>7</sup> In a similar vein, law enforcement can focus on hotspots of crime or chronic offenders.<sup>8</sup> The underlying logic of these anti-crime *focused deterrence strategies*, increasingly popular in the United States and Western Europe, is that law enforcement interventions against a specifically selected type of offender or criminal group – whether by limited punishment or comprehensive incapacitation – will alter the behaviour of either the group itself or, if the group is altogether incapacitated, of other criminal groups and offenders in the system.<sup>9</sup>

How ‘the most pernicious’ group is defined or what is designated as ‘the most harmful’ behaviour to be deterred can vary. In the United States, where the focused deterrence strategies have been adopted, the groups or offenders selected for law enforcement actions have mostly been either highly-violent gangs or chronic or repeat offenders – the dominant goal being to reduce violence.<sup>10</sup>

However, one can designate other key objectives for focused-deterrence approaches. Instead of selecting the group with the greatest proclivity toward violence as the target for law enforcement action and punishment, the priority targets can be, for example, criminal groups most likely to cooperate with terrorist groups, and their engagement with terrorist groups can be announced as the basis for striking them.<sup>11</sup> Other groups so selected might be criminal groups with greatest capacity to corrupt and capture the state’s institutions, or criminal groups participating in the most dangerous illicit economies such as nuclear smuggling.<sup>12</sup>

The broad concept, however, is to move law enforcement forces away from random non-strategic – at times outright haphazard – strikes based merely on random intelligence flows, or from blanket ‘zero-tolerance’ approaches against lowest-level offenders, and toward strategic selectivity and to give each the counter-crime operation enhanced impact.

Often, targeted deterrence is not simply a one-step process – i.e., eliminating the most pernicious group – but entails a sequential approach whereupon the second most pernicious group is targeted after the first one is incapacitated and then the third most pernicious, and so on, so that the robustness of the deterrent effect is enhanced and sustained.

A corollary to hotspot policing that directs law enforcement interventions toward most violent localities is the geographic sequencing and inkspot approach, analogous to counterinsurgency inkspot approaches.<sup>13</sup>

Especially in criminal markets where very large geographic areas are afflicted by intense criminal violence criminality and selecting the most violent neighbourhoods is difficult, law enforcement agencies may nevertheless pick a particular area, establish firm control there, and then gradually increase the areas of reduced criminality or state predominance vis-à-vis the drug trafficking organisations.<sup>14</sup> Such an approach does not imply a great level of violence by law enforcement agencies or most intensive strikes against traffickers or their hit men. But it does imply establishing preponderance of the state's coercive capacity in the selected locale so that the state has the ability to establish firm control and increase public safety. In phase two, the law enforcement presence is transformed to a lighter footprint, such as community policing. Heavier law enforcement forces are then sent to new areas of intense violent crime.<sup>15</sup> The latest Brazilian law enforcement approach toward the violent slum areas of Rio de Janeiro – the Pacification Police Unit (UPP) – is such a de facto urban counterinsurgency strategy. It has been able to score impressive successes so far, but it also continues to face many great challenges.<sup>16</sup> As with earlier Brazilian approaches in a similar vein, UPP draws on lessons from policing strategies deployed in Boston, USA, in the mid-1990s (See Box 1).

One of the latest innovations in law-enforcement focused deterrence strategies is to internationalise them. Proposed by Mark Kleiman in 'Surgical strikes in the drug wars', the

concept calls for countries with capacious law enforcement capacity to disrupt the most violent transnational criminal networks in order to help reduce criminal violence in other countries where law enforcement capacity is weak and lacks deterrence capacity.<sup>17</sup> Kleiman specifically applied the idea to the U.S.-Mexico context, suggesting that the Mexican government should designate the most pernicious Mexican drug trafficking group, i.e., the most violent one, and the United States law enforcement agencies should strike at, and disrupt, its activities on U.S. territory where the Mexican DTO is believed to be engaged in extensive drug trafficking and distribution operations. Since the U.S. drug market is so lucrative, being eliminated from the U.S. drug market would be exceedingly painful for the designated group; and other Mexican criminal groups would then have strong incentives to moderate their behaviour and reduce violence in order not to draw much attention from U.S. law enforcement agencies and preserve their access to the U.S. drug market. For such a transnational strategy to be effective, the punishment abroad needs to be costly to the criminal group – namely, the disruption of illicit activity abroad needs to generate either large financial losses or critical weakening of its logistical channels (if India, for example, decided to help Mexico by disrupting the operations of Mexican DTOs in India, the impact could be negligible because the penetration of Mexican DTOs into Indian criminal markets is minimal).

### **Box 1. Operation Ceasefire and beyond**

The focused-deterrence approaches and prioritised-interdiction concepts are to a great extent derived from Boston's fight against violent gangs in the early 1990s, known as Operation Ceasefire. The well-publicised targeting of the most violent criminal group and then the second most violent criminal group led the Boston gangs to want to avoid being labelled as highly violent so as not to become the focus of law enforcement action. Over time, violence in the areas where the gangs operated was dramatically reduced, with youth homicide falling by 66 per cent after the Ceasefire strategy was put in place in 1996.<sup>18</sup>

Building on the Boston Gun Project, the Ceasefire strategy applied problem-solving policing to Boston's youth-homicide problem and prioritised reducing homicides and violence over reducing other criminal activities, such as drug trafficking by youth gangs. Under this strategy, law enforcement agencies sought to deploy the preponderance of its might against the most violent offenders, including by arresting them. That was not difficult to achieve as the violent offenses were readily observable and the offenders frequently were subject to outstanding warrants or were on probation. The police could thus respond by tightening the supervision of probation, serving new warrants, or setting tougher bail conditions, removing juveniles under supervision to secure facilities, and reopening cold cases. Law enforcement authorities actively sought to advertise their arsenal of punishment tools to gang members and stress that they were targeted for their proclivity toward violence. Critically, the strategy hinged on the fact that in the Boston and U.S. setting, the characteristics of the chronic illegal activities made the most worrisome criminal populations vulnerable to being targeted for the full range of law enforcement tactics.<sup>19</sup>

The 'pulling levers' approach, as the tactic came to be known, also entailed involving other members of the community, such as churches, schools, and local businessmen, to intervene with gang leaders and pressure them to reduce the violence. It included meetings among gang bosses, the city's officials and top law-enforcement officers, and community leaders (whether in correctional facilities or school assemblies or through individual contacts with gang members) to discuss crime, especially violence, and offer solutions. The focused deterrence approaches and mechanisms, such as pulling levers, have been successfully replicated elsewhere in the United States, such as in Minneapolis and Indianapolis.<sup>20</sup> Operation Ceasefire also became the model for similar approaches abroad, such as, for example, in Brazil where the GPAE (Grupamento de Policiamentoem Áreas Especiais) policy was implanted in Rio de Janeiro in 2000.<sup>21</sup> As noted earlier, to some extent, the current UPP policy in Rio de Janeiro for retaking the violent *favelas* is based on the lessons of Boston's Ceasefire.<sup>22</sup> In both of the Rio cases, Brazilian law enforcement agencies have prioritised reducing violence among the drug gangs over focusing on other criminal activities of the gangs, such as reducing drug trafficking. In the case of the UPP, the focus has been equally on asserting state presence in and control of territories previously ruled by the drug gangs.

## Implementation challenges of focused-deterrence strategies – Beyond U.S. internal law enforcement applications

Outside the United States, the implementation of the focused-deterrence approach discussed in Box 1 has frequently proved to be far from smooth and has run into a variety of difficulties, with the chosen strategies often not replicating the results experienced in the United States. In Mexico, for example, the Calderón administration ultimately came to prioritise targeting the two

highly-violent groups – La Familia Michoacana and the Zetas – but failed to achieve systemic deterrence effects or an overall reduction in violence. The government's tactical gains against La Familia Michoacana only translated into the emergence of a new, but still highly violent group – Los Templarios. Rather than being clearly defeated, the Zetas were primarily displaced to new areas, including Monterrey and Nuevo León and close to the southern border of Mexico (they have also set up robust operations in Central America).<sup>23</sup> Several types of implementation challenges have emerged.

### Political sensitivities regarding selective targeting

The focused-deterrence approach is mostly based on deterrence by punishment strategies, though it involves an element of capacity denial, i.e., the physical prevention of an actor from undertaking an action, such as by incapacitating the actor.<sup>24</sup> Deterrence by punishment is based on the capacity of Actor A (law enforcement agencies) to impose such damage on Actor B (the criminal group) in retaliation for Actor B's actions (violence perpetrated by the criminal group) that Actor B will be dissuaded from undertaking the action in the future. A focused-deterrence strategy can also include extended deterrence – seeking to influence not only the primarily targeted recipient, but also other, non-targeted, criminal groups in the system to desist from various actions.

For deterrence by threatened punishment to work, the threat needs to contain a clearly-communicated assurance that if actor B (the criminal group) does not undertake the action (violence), it will not be punished. Such assurance in turn means that law enforcement actors are signalling that other illegal behaviour (for example, drug trafficking, as opposed to violence) will be not punished with the same intensity and that 'well-behaving' criminal groups (not very violent ones, for example) will not be the primary focus of law enforcement.

Yet persuading one's political constituents and perhaps also external allies that going easier on some criminals is in fact a sound law enforcement strategy, and not corruption, requires skilled leadership. In Rio, one of the reasons why GPAE ran into difficulty and was ultimately abandoned was the political controversy surrounding the prioritised focus on violence and not drug distribution per se. A decade later, Rio's citizens have been far more willing to accept a differential law-enforcement focus on retaking territories and reducing violence rather than combating drug trafficking in the favelas and have supported the UPP policy. At the same time, however,

the political sensitivities regarding prioritising only certain types of crime have not completely disappeared, and Rio's officials have gone to great lengths to describe the UPP effort as also disrupting drug trafficking, not merely focusing on violence. They have thus at times issued conflicting guidelines to the UPP police teams inside the retaken favelas as to whether or not to focus on disrupting drug distribution there.

Similarly, during most of the six years that the Calderón administration was in power, it had to fend off accusations that it was going easy on the Sinaloa cartel. Although the Sinaloa cartel has been less violent, gruesome, and brazen than the Zetas or La Familia Michoacana, going lighter on the Sinaloa cartel was perceived by some in the Mexican public as favouritism and corruption on the part of the government. The Calderón administration felt compelled to deny that any such differential targeting was taking place and undertook actions against the Sinaloa cartel to demonstrate that the government's interdiction focus was even-handed, even though such equal targeting would intensify violence.

### Scale effects and system complexity

The success of Operation Ceasefire in Boston (See Box 1) critically hinged upon the *pre-existing* deterrence capacity of the police, even though one objective of the strategy was to further boost deterrence capacity. The 'pulling the levers' mechanism sought to highlight to gangs the punishment measures the police had at its disposal. Moreover, the less violent the system became, the easier it was to identify and strike against offenders, and hence deterrence capacity grew. But critically, even in the initial phases of Ceasefire's implementation, the Boston police enjoyed a great deal of credibility with the gangs and the gangs feared announced action by the police. Thus when the Police Commissioner Paul Evans indicated that he would focus his forces on the most violent gang, the gang believed that his forces had the capacity to undertake such prioritisation and that the gang's leaders would face serious consequences.

The problem in Mexico and elsewhere where law enforcement capacity is overwhelmed or highly corrupt, is that such credibility is lacking – for multiple reasons. One reason may be the inability to identify perpetrators of the pernicious behaviour selected for deterrence. In Mexico, for example, the fracturing of the DTOs and system-wide escalation of violence muddled the intelligence picture. Partly as a result of law enforcement actions, many of Mexican DTOs have splintered, new offshoots have emerged, and youth gangs have been contracted by DTOs for particular operations, creating an especially challenging intelligence environment. Moreover, a sense that all enforcement is overwhelmed and lacks knowledge of local crime dynamics has tempted and allowed criminals outside of the major criminal groups, including petty criminals, to perpetrate serious crimes, and has given rise to the proliferation of kidnapping, extortion, and even homicides. Using government data, a Mexican non-governmental research group, México Evalúa, estimated that between 2007 and 2010, various forms of crime increased in Mexico, including homicides by 96 per cent, kidnapping by 188 per cent, extortion by 100 per cent, and aggravated robbery by 42 per cent.<sup>25</sup> In 2012, the Calderón administration admitted to its lack of investigation capacity and announced that it would no longer update its long-running count of drug-related deaths because less than 10 per cent of crimes in Mexico were in fact investigated.<sup>26</sup> The multi-polarity of Mexico's criminal market, with many powerful criminal groups, makes investigation extremely challenging. However, if the perpetrator of the pernicious behaviour cannot be identified and law enforcement actors cannot meaningfully retaliate against it, deterrence collapses. In Colombia in the 1980s and early 1990s, in contrast, the market was bipolar, i.e., essentially dominated by two groups – the Medellín and Cali DTOs – and hence a sequential targeting strategy there had the luxury of relatively clear intelligence of whom to target.

Apart from identification problems, the second element upon which effective deterrence

critically centres is the ability to inflict meaningful punishment that the criminal group fears. However, if the criminal group, such as in Pakistan, believes that it has the law enforcement agencies in its pocket or that it will be protected by the country's intelligence services or political parties, for example, deterrence collapses.

### **Difficulties in concentrating resources**

If the law enforcement apparatus can deliver a hefty punch, the credibility of deterrence grows. The ability to concentrate resources often reduces identification difficulties, by enhancing investigation capacities, and thus increases the likelihood of punishment. Under some circumstances, it can even increase the pain of punishment – extrajudicial measures aside, a greater density of police officers can enable more extensive arrests of members of a criminal group and hence more severely weaken the group and increase the costs it will suffer from misbehaving.

Yet if resource scarcity, including of law enforcement assets, is an acute problem, such concentration of resources can be as sensitive politically as going lighter on some criminals. Areas without 'treatment,' i.e., without a dense presence of law enforcement officials, will question why the selected 'treated' community where law enforcement assets are concentrated deserves such state largesse while other equally needy areas go lacking. Political incentives push toward the opposite approach of giving everyone a little bit, although such an approach can undermine and completely eviscerate both deterrence and incapacitation capabilities of law enforcement.

It also needs to be noted that badly handled increases in law enforcement density can generate resentment if the greater presence of law enforcement officials triggers and perpetuates violence and if the law enforcement personnel are abusive and violate human rights.



Urban spaces where law enforcement concentration can quickly produce visible results and perhaps even be combined with economic development anti-crime interventions producing cross-sectoral synergies can provide models of success. However, to build the needed political support for such resource concentration, it is necessary for the state to indicate that it has a credible and viable strategy for expanding the areas of such multifaceted state intervention beyond the original inkspot.

### **Structure of criminal groups and transnational deterrence**

Deterrence works best against hierarchical actors with tight control and discipline structures. Criminal groups organised as loose networks have far less ability to communicate orders to members and enforce discipline. The more fractured and volatile the chain of command is, including when the result of law enforcement decapitation policies, the more deterrence signalling can be undermined. The chance of rogue elements or loosely-affiliated factions striking on their own and engaging in unauthorised actions weakens deterrence. Law enforcement agencies also have far greater difficulty in clearly and credibly communicating threats.

The tightness or looseness of structures and internal discipline becomes a critical factor in internationalised focused-deterrence strategies, such as proposed by Kleiman. If Mexican drug trafficking groups operating in the United States have strong hierarchical structures and can enforce decisions and disciplines smoothly along the entire chain of its operations on both sides of the U.S.-Mexico border, the credibility of deterrence actions by U.S. law enforcement in the United States increases greatly and actions on the U.S. side of the border have a chance to alter the behaviour of the DTOs in Mexico. If on the other hand, the cross-border criminal operations are based on loose networks, U.S. law enforcement operations against the U.S.-based operations of the DTOs may have minimal effects on the behaviour of the DTOs in Mexico.

In the U.S.-Mexico case, the evidence regarding the tightness or looseness of the criminal group structures is, in fact, very mixed (See Box 2).

Yet another problem with implementing transnational focused-deterrence strategies is that the national security and public safety interests of one country may not be aligned at all with such interests of another country. Transnational focused-deterrence strategies, like other international cooperation for incapacitating transnational criminal groups, may require that other countries jeopardise their arrangements with particular criminal groups in ways that the countries may be extremely reluctant to do.

Examples abound. Between the 1940s and 1980s, Mexico's law enforcement, for example, frequently let various criminal groups operate with impunity as long as they did not generate too much trouble in Mexico and focused on smuggling to the United States. Pakistan has sponsored and cultivated criminal and terrorist groups operating in Nepal, as well as Bangladesh and Pakistan, to engage in asymmetric warfare against India. In turn, New Delhi India has been reluctant to act against Indian criminal groups operating in Nepal, so as to preserve India's ability to use them for anti-Pakistan and counterterrorist operations in Nepal.<sup>27</sup> In the latest conflagration of the terrorism-insurgency-crime nexus – Mali – Algeria has been loath to act against terrorist groups and criminals operating out of Mali – one reason being to avoid provoking any retaliatory actions by them in Algeria (this hoped-for outcome has not materialised anyway – in January 2013, as a possible retaliation for Algeria permitting the use of its airspace for the international intervention to depose the jihadists controlling northern Mali, terrorists seized international hostages at an Algerian gas field). These are but few examples out of many of the fact that transnational criminal groups that may be seen as dire threats by one country can be seen as highly useful assets by another country, or at least as a low-priority nuisance that should not be needlessly provoked by law enforcement actions.

### **Box 2. Structural variation and deterrence effectiveness**

When two U.S. agents of U.S. Immigration and Customs Enforcement (ICE), Jaime Zapata and Victor Avila, were attacked and shot in Mexico in February 2011, the perpetrator, later identified as the Zetas, apparently actively cooperated with U.S. law enforcement officials and disclosed which group members were behind the act.<sup>28</sup> The Zeta leadership also claimed that it did not know or authorise the attack. Irrespective of whether the latter is actually true, the *de facto* handing over of someone whom the Zetas leadership designated as the perpetrator (or as the scapegoat, whichever the case may be) shows that the Zetas had some active fear of U.S. law enforcement capacity, and deterrence effects were in fact in play.

At the same time, recent evidence from illicit marijuana cultivation in the United States suggests that Mexican criminal groups operating in the United States may possibly resemble far more loose networks and atomised actors rather than tightly-controlled chains of operation under the thumb of large Mexican DTOs, as has been previously believed.<sup>29</sup> The rapidly-expanding illicit cultivation of marijuana in U.S. national and state parks, particularly in California, appears to be organised by independent groups of Mexican nationals, often undocumented workers, residing in the United States. These groups seem to have minimal connections to and interactions with the large DTOs. Also notable is that, compared to other DTOs currently operating in the United States, including other Mexican groups, these particular marijuana-cultivating organisations have been willing to engage in comparatively high levels of violence against U.S. law enforcement agents eradicating the corps, regularly shooting at them as well as tourists in the protected parks who wander close to their operations. The continually-expanding plantations and the violence indicate that these groups discount the credibility of the U.S. deterrent threats. U.S. law enforcement actions against their assets, such as eradication of the plantations and arrests of the cultivators, have produced no palpable effects on the behaviour of other criminal groups in Mexico. In this case, the deterrence strategies implemented by the United States appear to have some small effects on the Mexican DTOs operating within the United States but their external, transnational, effects on the DTOs within Mexico appear to be non-existent.

### **Difficulties in monitoring policy effectiveness and analytical inferential problems**

Like all policies, the focused-deterrence approach and selective-targeting strategies require careful monitoring and evaluation so that law enforcement can optimise the threat and nature of punishment as well as the design and clarity (or opacity) of the demand-component of the deterrent signal. Careful analytical monitoring also allows for mitigating any perturbing effects on the robustness of deterrence arising from different institutional and cultural contexts within which deterrence threats are communicated.

And as with assessments of other types of deterrence, evaluating the effectiveness of the focused-deterrence strategies presents difficult inferential problems and threats to validity. Assume that a criminal market in a city is highly violent, and that under a focused-deterrence approach, members of the most violent criminal group operating in that market are systematically arrested. Subsequently, violence drops. Does it mean that the focused-deterrence approach was effective? Perhaps; perhaps others were deterred from perpetuating violence. Violence could have dropped, however, for a different reason – another criminal group in the city having won

in the internecine conflict and established firm control over that criminal market, helped by law enforcement's incapacitation of their rival. Alternatively, other policing approaches adopted at the same time as focused-deterrence approaches could account for the reduction in violence. Or it could simply be that the operational tempo of the previous strategic warfare among the criminal groups was unsustainable and the criminal groups burned themselves out, and outside policy interventions did not have a strong effect on the changes in the pattern of violence at all.

Two real-life examples come from Mexico's Tijuana and Ciudad Juárez. During a large part of the Calderón administration, both were highly violent and dramatic beacons of the drug-related violence in Mexico. Mexican law enforcement came to focus on both cities and after 2010, violence dramatically declined in Tijuana and in 2012, also in Ciudad Juárez. Does this mean that law enforcement strategies in the cities were effective?

A key explanation of why violence subsided in Ciudad Juárez and Tijuana is that in both cities one criminal group – the Sinaloa cartel – won control over most of the area's criminal markets and smuggling routes.<sup>30</sup> Better policing, such as the adoption of hotspot policing, and perhaps even improvements in Ciudad Juárez municipal police under the leadership of Mexico's glamorous cop Julián Leyzaloa, contributed to violence reductions in the city. But the 2012 40 per cent decline in murder rates from the city's peak levels in 2009 and 2010 critically reflected the emerging dominance of the Sinaloa cartel.

Similarly, in Tijuana, the Sinaloa cartel ultimately won the upper hand in the DTO power struggle. During the military operations there between 2009 and 2010, the Sinaloa cartel was allegedly particularly effective in taking advantage of the government-installed hotline to provide

information on its rivals. In Tijuana too, there were improvements in policing, including Leyzaloa's (then heading Tijuana's municipal police) efforts to reduce corruption among the municipal police, better coordination among the military, the police, and prosecutors, and the adoption of rapid responses to reported crime, particularly brazen attacks in Tijuana's business centre. But the establishment of a new balance of power in the criminal market was critical. Disentangling the effects of both policy interventions and endogenous changes on the criminal markets can be very difficult, especially when some of the endogenous effects are long-term, such as demographic changes in the criminal population.

Assessing the extended deterrence effects of the focused-deterrence approach on criminal groups who are not direct targets is even more difficult. Even assuming that a particular law-enforcement strategy – selective targeting of the greatest violator, for example – actually produced changes in the behaviour of the violator, when and how can it be determined that other criminal actors learned from that that law enforcement policy? Assume that one criminal group is highly violent. Law enforcement agencies repeatedly strike against it. Other groups in the system, which have not been very violent, remain so and do not, for example, attempt to seize the territory of the group facing the brunt of law enforcement action. Does it mean that the other groups have learned the right lesson from the law enforcement action and adjusted their behaviour so as not to provoke similar strikes against them? It could mean that. But it could simply be that they had never intended to escalate violence and seize the territory of the targeted criminal group in the first place. The only way to establish with some level of confidence what explains the behaviour of these 'dogs that don't bark' is to conduct interviews with the criminal groups' leaders and managers.

## **Policy dilemmas in designing focused-deterrence strategies and side-effects of selective targeting**

As outlined above, the objectives set for selective targeting and focused-deterrence strategies can vary. They can, for example, be to reduce violence in the criminal market, corruption of state institutions, or the willingness of criminal groups to cooperate with terrorists. Or the government's prime objective could be to increase state control over criminal groups. These different objectives can at times be in conflict with one another.

### **Different bases of selective targeting and focused-deterrence strategies**

Even when the most important goal is to reduce violence in the system, basic choices need to be made. If law enforcement agencies seek to reduce violence through the focused deterrence approach, they could, and probably should, concentrate their attacks first and foremost on the most violent criminal group. But they might alternatively seek to reduce violence via incapacitation – focusing on the weakest groups in the system so that one criminal group can win in the particular locality. Thus selective targeting approaches may generate strategies – focused deterrence versus focused incapacitation – that compete with one another when it comes to designing and resourcing implementation strategies.

Different criteria on which focused law-enforcement strategies can be based come with different costs, benefits, and trade-offs. Which criterion for focused law-enforcement strategy to select needs to be assessed with respect to local conditions in the particular country on the basis of a comparative cost-benefits-trade-off analysis. Conditions that need to be considered in such comparative analysis include the distribution of power among the various criminal groups, the likelihood of the

establishment of balances of power under different constellations of power distribution, the criminal groups' violence proclivities, and the relative strength of law enforcement forces, including their capacity for generating the necessary detailed intelligence on criminal groups and their capacity to impose pain of the targets of deterrence or incapacitation, and the ability to clearly signal within the particular context. If, for example, the law enforcement apparatus has a limited capacity to attribute individual murders to a particular group, the strategy of targeting the group with the greatest violence proclivity may not work due to insufficient information. Local conditions need to inform what targeting criteria are selected for focused law-enforcement approaches and selective interdiction.

### **High-value decapitation versus middle-layer targeting**

There is also the dilemma of whether to target a selected group's top leaders or middle-level operatives. Targeting low rank-and-file members is the least efficacious strategy and mostly only results in flooding prisons. Such a strategy rarely alters the behaviour of organised crime groups or incapacitates them, and abandoning such a strategy is an easy choice.

But whether to focus on the middle-layer or the top layer is a more difficult decision. High-value targeting, i.e., focusing on the top layer, is often the dominant response in U.S. law enforcement operations abroad; and the United States often encourages other countries to adopt high-value targeting, including through the creation of specialised-interdiction units. High-value targeting has also become popular in counterterrorism and counterinsurgency efforts. In all three settings, it is mostly motivated by the premise that high-value targeting will incapacitate the group. That may at times be the outcome of counterterrorism operations against tightly-hierarchical terrorist groups (such the Shining Path in Peru). Even when total incapacitation does not result, repeated strikes

against high-value terrorist targets can weaken the operational capacity of the group, as has been the outcome of U.S. counterterrorism operations against al Qaeda.

High-value-targeting against criminal groups have often yielded far less effective and more problematic outcomes. One reason is that the ability of criminal groups to replenish top managers arrested or killed by government forces is great in absolute terms, and far greater than in the case of insurgencies and terrorist organisations, since the leadership and organisational skills required of terrorist and insurgent leaders tend to be far greater than those of drug traffickers. The history of the drug trade is one of new traffickers and organisations re-emerging each time law enforcement agencies appeared to have struck a decisive blow to the previously most active groups. However, while the regenerative capacity of the drug trade is immense and new DTOs and traffickers will always emerge as long as the illicit drug market exists- and will persist even in legal drug markets as long as law enforcement capacity is weak<sup>31</sup> – not all the organisations and leaders are equally violent and powerful.

Second, without a clear strategy and an anticipation of reverberations in the illicit market of the weakening of particular DTOs, just a blanket opportunistic decapitation strategy, implemented as information becomes available on some traffickers, will simply lead to greater turmoil in the market and further turf battles among and within the remaining trafficking organisations. Consequently, strategic analysis by the analytical branches of law enforcement, such as analytical sections of specialised interdiction units, is as important as information gathering. However, more often than not, high-value targeting stimulates two kinds of violence. It can lead to succession struggles and internal infighting. It can also tempt other criminal groups to seek to violently take over the group's territory and corruption networks. Thus such struggles generate severe externalities for surrounding communities.

Focusing law enforcement on the middle layer of criminal groups tends to be more effective in incapacitating groups and reducing violence. Arresting as much of the middle layer at once limits the leadership regeneration capacity of the group, more severely diminishes its operational capacity, and may allow subsequently for more effective prosecution of the top bosses (if plea bargains with middle-level operatives can be struck in exchange for evidence against the high-value targets). And if interdiction of the targeted group stimulates a takeover attempt by another group, it is likely to be less violent because the criminal group whose middle layer has been gutted will have a greatly reduced capacity to resist the takeover of its territory and networks (it needs to be noted, however, that under some circumstances, middle-lever targeting has produced unexpected violence. Specifically, the targeting of the Taliban's middle-layer in Afghanistan has produced a new generation of middle-level commanders which is more violent and intransigent and more strongly embraces global jihadi ideology).<sup>32</sup>

However, intelligence-capacity requirements for middle-layer targeting tend to be far greater than for high-value targeting. Efforts to bring down as much of the middle layer as possible, especially in one operation and thus has a greater incapacitation effect, may have to run for several years during which law enforcement units must have the capacity to identify and follow the targeted individuals, preserve and increase intelligence on them, and maintain operational security, so that sensitive information does not leak out to the criminal groups. In the context of highly-corrupt and very ineffective police forces, much reform may have to take place before law-enforcement agencies are capable of going after the middle layers. Carefully vetted and constantly re-vetted special insulated units will be needed for such a role. In contrast, intelligence on high value targets can be provided far more readily by external actors with extensive intelligence capacity. High-value targeting also leads to simpler tactical one-time operations, rather than the complex coordination

operations that middle-layer targeting requires. Finally, although of limited effectiveness and associated with negative side-effects, high-value targeting lends itself to government public relations campaigns, as captured capos are easy to display to TV cameras as proof of the effectiveness of government anti-crime policies.

But even though high-value targeting against criminal groups tends to be of limited effectiveness with respect to incapacitating the groups, it may nonetheless be highly tempting for law enforcement to undertake if the selective targeting is part of a focused-deterrence approach. The reason is that although from an organisational perspective hitting the middle layer – especially if a large segment of the middle-layer can be removed in one operation – is most incapacitating and costly, from the perspective of the leadership, hitting the top layer is most costly. Thus, if law enforcement operatives want to inflict the greatest punishment in order to strengthen deterrence, they may well be tempted to go after the top leaders. That may better induce the leaders to negotiate or alter their behaviour, but it can also lead to succession struggles and only minimally inhibit the operational capacity of the group. Leaders can continue running their criminal organisations from prisons, and even if they do not have the capacity to do so, the middle layer can easily provide new leaders.

### **The dilemmas of narcopeace**

Imagine that the set objective of selective targeting and focused deterrence strategies was to reduce violence in the criminal market. And as a result of law enforcement interventions, one group has won and violence has subsided – for example, the criminal boss Don Berna's establishing control over Medellín criminal markets after 2002 as a result of Operation Orion undertaken by the Colombian government.<sup>33</sup> Is that a good or bad outcome?

The emergence of such a 'narcopeace' is not necessarily detrimental to either the authority

of the state or the well-being of a community, as long as the government takes advantage of such a reduction in violence to deepen police presence and reform, institutionalise the rule of law, and strengthen socioeconomic development for marginalised communities – in other words to strengthen law and order and beef up positive state presence in previously crime-ridden areas and marginalised communities.

In fact, during times of intense criminal violence, it is extraordinarily difficult to effectively implement such efforts. Energies of police units become consumed by the need to survive and respond to criminal acts, and deeper institutional reforms inevitably receive fewer resources and attention.

However, to the extent that balances of power in the criminal markets are re-established and violence consequently falls off, such an outcome will only be a success for rule of law if law enforcement agencies use the opportunity to enhance their deterrence capacity vis-à-vis the criminals. Although law enforcement efforts cannot hope to eliminate all crime or stop drug trafficking, they can teach criminals that certain actions, such as highly violent behaviour, is clearly out of bounds and will result in the preponderance of law enforcement power bearing down on them. Law enforcement efforts also need to teach criminals that they have to be prepared to accept such a response and not retaliate by shooting up the local police precinct or the mayor's office. In other words, the criminals need to be made to understand that authority and power lies with the law enforcement agencies.

The big danger with violence reduction being essentially the result of victory by one criminal group rather than of greater effectiveness of law enforcement institutions is that such 'narcopeace' is ultimately vulnerable to changes in balances of power in the criminal market. Without strengthening law enforcement and better integrating it into local communities, such 'narcopeace' can be extremely vulnerable

to a criminal group's growth in relative power. New criminal challengers can plunge the market back into violence, while law enforcement institutions continue to lack the deterrent capacity to keep renewed power contestations from once again visibly and bloodily spilling out on the city's streets.

## Conclusion and recommendations

All too often, zero-tolerance approaches adopted by countries with weak law enforcement institutions have failed to produce desired outcomes, including reducing violent crime. Even in countries with strong law enforcement institutions, such as the United States, zero-tolerance approaches can lead to greater violations of human rights and civil liberties and by flooding prisons with low-level offenders, impose great costs on societies.

In countries suffering from high levels of criminal violence, such as in Latin America, blanket, zero-tolerance approaches often encourage defining the problem in absolute terms – dismantling organised crime or stopping illegal drug flows. Such goals are mostly unattainable and guarantee costly failure. More attainable, yet crucial objectives such as reducing the harms associated with the drug trade and other organised crime – the violence, corruption, and erosion of the nation's social fabric and bonds between citizens and the state – are largely ignored.

Reducing the violence around drug trafficking and other illicit economies is particularly critical. Societies experiencing chronic and uncontrolled violence tend to have little faith in government and can transfer their loyalties to criminal groups that provide a modicum of safety, albeit perverse safety. Governments that effectively reduce violence often do not rid the country of organised crime but lessen its grip on society, thereby giving citizens greater

confidence in government, encouraging citizen cooperation with law enforcement, and aiding the transformation of a national security threat into a public safety problem.

Particularly with respect to transactional crimes associated with illicit economies in renewable resources, such as the drug trade, reducing the incidence of the crimes per se should be secondary to minimising the harms stemming from the illicit economy. Instead of trying to suppress the volume of illegal drug flows, governments should seek to minimise the violence and corruption surrounding the drug trade and societal dependence on the drug trade for access to public and socioeconomic goods.<sup>34</sup>

Focused deterrence and selective targeting strategies allow for more appropriate goals, take into account the harms associated with particular illicit economies and law enforcement actions to suppress them, and offer attractive alternatives to zero-tolerance approaches. They allow for the mitigation of some of the problems and negative side-effects generated by zero-tolerance approaches. They also tend to be less resource-intensive than zero-tolerance approaches. In the United States, where focused-deterrence strategies have been pioneered, they have produced impressive results. The implementation of such approaches elsewhere in the world, particularly in areas where law enforcement is weak to begin with, has often run into difficulties, and their effectiveness has been comparatively small. Nonetheless, even in such settings, they still provide some of the best available policy alternatives. Designers of such strategies will need to grapple with some acute policy dilemmas that cannot be resolved in the abstract and need to take into account local circumstances. However, recognising the implementation difficulties encountered outside of the United States, and the limitations and policy dilemmas of such strategies, allows for tailoring their design to enhance their policy effectiveness even in less than optimal settings.

In light of these issues and aware of a variety of socio-political environments within which police services operate, a number of specific recommendations can be made:

- Mindful of the limitations and often damaging effects of a zero-tolerance approach, law enforcement agencies should consider adopting focused-deterrence strategies and selective interdiction approaches.
- For most transactional crimes, such as drug trafficking, the law enforcement focus should shift to reducing violence and the capacity of criminal groups to corrupt state institutions instead of defining suppression of flows as the most important objective.
- Policies that further alienate marginalised populations from the state and strengthen their dependence on illicit economies and dangerous non-state patrons should be avoided.
- Law enforcement strategies should be complemented with socio-economic development policies targeted to reduce crime and populations' dependence on crime.
- Based on local conditions, careful consideration must be given to identifying what the most pernicious behaviour of criminal groups to be deterred is and around what objectives to base focused deterrence and selective interdiction.
- Law enforcement, as well as any complementary socio-economic, resources must be concentrated as much as possible. Cross-sectoral synergies – the involvement of civil society and the business community in the law enforcement strategy – should also be sought.
- Where the scale and geographical area of dangerous criminality is extensive, law enforcement agencies should adopt 'spreading inkspot' approaches. But it is equally important to seize 'low-hanging fruit' (i.e. relatively easy law enforcement targets) to demonstrate success and build up political support for the adopted strategies.
- When picking the objectives and bases around which focused-deterrence strategies and selective targeting will be built, law enforcement managers should consider carefully the political context, the level of pre-existing intelligence and enforcement capacity of the government, the government's capacity to concentrate resources, the size and scale of criminality, the complexity of and power distribution in the criminal market, and the structure of criminal groups. Consideration must be given to how these factors might disrupt the effectiveness of the strategies and mitigation responses built into the law enforcement strategy design.
- If violence subsides as a result of new balances of power having been formed in the criminal market, managers must resist the temptation to declare victory and end the law enforcement effort. The relative calm should be seized to deepen police reform, build up intelligence capacity, advance community policing, and beef up socioeconomic policies focused on crime prevention so as to address the root causes of crime and violence.



## Modernising Drug Law Enforcement

***A project by IDPC, with the participation of the International Security Research Department at Chatham House and the International Institute for Strategic Studies***

Drug law enforcement has traditionally focused on reducing the size of the illicit drug market by seeking to eradicate drug production, distribution and retail supply, or at least on the stifling of these activities to an extent that potential consumers are unable to get access to particular drugs.

These strategies have failed to reduce the supply of, or demand for, drugs in consumer markets. Given this reality, and a wider policy context where some governments are moving away from a 'war on drugs' approach, drug law enforcement strategies need to be adjusted to fit the new challenge – to manage drug markets in a way that minimises harms on communities. A recognition that law enforcement powers can be used to beneficially shape, rather than entirely eradicate, drug markets is being increasingly discussed.

The objective of this project, led by IDPC, with the participation of the International Security Research Department at Chatham House and the International Institute for Strategic Studies, is to collate and refine theoretical material and examples of new approaches to drug law enforcement, as well as to promote debate amongst law enforcement leaders on the implications for future strategies.<sup>35</sup> For more information, see: <http://idpc.net/policy-advocacy/special-projects/modernising-drug-law-enforcement>.

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- 35 Dave Bewley Taylor is the editor of the Modernising Drug Law Enforcement project publication series

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