5. Judicial and Social Conditions for the Containment of Organized Crime: A Best Practice Account

by Edgardo Buscaglia

Introduction

Organized crime represents a pernicious outgrowth of social, political, and economic dysfunctions within states and societies. These crime groups are characterized by the presence of individuals (politicians, businesspeople, union members, or simply gunmen) who are embedded at the regional, local, national, and transnational levels. They are part of an underworld governance to provide services (e.g., protection) to those who pay for and commit serious crimes. In order for these groups to grow, they need political and social protection. This definition of organized crime touches on the social and political roots of organized crime and is based on the fact that stable criminal groups do more than just commit serious crimes. Authors from Shelling to Milhaupt and West have pointed out the multidimensional social and economic roles of criminal groups in the provision of "protection" to individuals and legal persons (i.e., legal businesses) within environments where the state fails to provide adequate law and order in an effective and non-corrupt manner, resulting in social, economic, and political power vacuums (Schelling 1967; Milhaupt and West 2000). In this context, organized crime provides an imperfect governance social structure when the state fails and becomes absent in people's lives.

In the average person's perception, organized crime is associated with serious and complex predatory crimes, such as human and organ trafficking and many other types of economic crimes (including arms trafficking, smuggling, gambling, and cybercrime). To the extent that organized crime is allowed to engage in the most serious types of crimes (e.g., trafficking in humans, organs, arms, and migrants, as well as support for acts of terrorism), it becomes a threat to international human security.

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* Professor Dr. Edgardo Buscaglia is Senior Scholar in Law and Economics at Columbia University in New York; a Visiting Professor at UNAM (Mexico); the President of Instituto de Acción Ciudadana; and the Director of the International Law and Economic Development Centre.

Illegal trafficking in biological, radioactive, and chemical materials for weapons of mass destruction is only possible with the explicit or tacit support of corrupt state authorities.[1] These transnational criminal organizations manage all this with the help of corrupt public officials at the highest levels and enjoy considerable levels of social protection from marginalized groups (e.g., groups subject to ethnic discrimination seeking protection) (Buscaglia 1997). In these contexts, it is often the case that the state has failed to provide the most basic public goods in the form of health, education, and justice, making it easier for organized crime to exploit the voids left open by the states.

At the same time, it must be recognized that organized crime's involvement in complex crimes, such as human trafficking, does not always have the pyramid-shaped "mafia" organizational structures, some imagine.[2] Criminal organizations are more frequently dynamic networks with loose horizontal structures and international connections among sometimes autonomous cells, which makes law enforcement evidence-gathering much more difficult (Williams 2001). Moreover, the links between organized crime and corruption in the public sector also constitute a clear threat to the development of democracy and to international peace and security. Criminal groups hamper the development of democracies to the extent that they "bias and buy" electoral processes to their advantage and hamper peace when arms trafficking feeds regional wars.

This chapter focuses on best judicial and civil society practices to prevent and combat organized crime. It should not be forgotten that law enforcement and judicial channels are necessary – but far from sufficient – conditions for eradicating the social and political roots of organized crime.

In short, transnational organized crime and corruption are shaped by the lack of political strength, social dysfunctions, and lack of international coordination between states to generate adequate public polices, as well as by the lack of civil society's preventive mechanisms. In this framework, corruption and organized crime are much more than a behavioral phenomenon linked to criminal law. In this regard, social and political phenomena such as organized crime need to be addressed through social and political international policy instruments above all. Empirical research supports this assertion. For example, the analytical results found in Buscaglia and van Dijk (2003) and in Buscaglia (2008; 2012) are based on a sample of more than 67 and 108 countries, respectively, and attest to the deep links between the growth of organized crime and the growth of public sector corruption within a large number of countries.

1 | See Buscaglia and Gonzalez-Ruiz (2002).

2 | Ibid.

The empirical foundation of policy recommendations

This chapter aims to delineate the best ways to contain (combat and prevent) organized crime and public sector corruption in order to reduce serious crimes involving political, economic, and armed actors within criminal enterprises. The empirical analytical foundation of supporting policy recommendations in this chapter are based on prior calculation of an index of high-level corruption for 108 countries developed in Buscaglia (2008). Corruption is defined in this chapter as the abuse of public power for private gain.

To assess the prevalence of street-level corruption, previous empirical studies used an indicator compiled by the International Crime Victimization Survey, which measures the frequency at which citizens personally experience requests for bribes (Buscaglia and van Dijk 2003) – mainly through street-level and medium-level corruption – as part of the interaction between average citizens and public agencies of the state in 108 countries. The extent and frequency with which organized crime penetrates public institutions and biases public policies in their favor (i.e., high-level corruption) was not measured in any prior corruption index. To survey the prevalence of high-level corruption, Buscaglia (2012) measures violations of the clauses contained in the United Nations Convention against Corruption (Mérida Convention).[3]

In order to assess organized crime, this chapter also relies on the results of applying an index of organized crime found in Buscaglia and van Dijk (2003, 7–12), which was further improved and expanded upon in Buscaglia (2008) by adding objective factors linked to complex crimes.

Organized crime is defined by Article 2 of the United Nations Convention against Transnational Organized Crime (the Palermo Convention) as a group of three or more individuals committing serious crimes for profit or material benefit.[4] Buscaglia (2008) seeks available country data on the core activities of organized crime groups such as credit card fraud, drug trafficking, human trafficking, arms trafficking, stolen cars, and smuggled cigarettes. A composite index is later built that includes indicators of seven core activities (including: trafficking in human beings, trafficking of migrants, arms trafficking, counterfeiting, smuggling, extortion, and credit card fraud) and five secondary aspects (the cost of organized crime on business, informal economy as a percentage of gross domestic product, money laundering, and tax evasion).

Based on the above, public policies that reduce both complex crimes – high-level corruption and organized crime indicators – are branded by Buscaglia (2012)

3 | See http://www.unodc.org/unodc/en/treaties/CAC/ and Buscaglia (2012).

4 | United Nations Convention Against Transnational Organized Crime and the Protocols thereto at: http://www.odccp.org/odccp/crime_cicp_convention.html

as "best practice." As explained below, only 13 countries[5] out of a sample of 108 have been able to develop best practices across the board and thus contain both types of crimes.

Organized crime and high-level corruption

Successful national and international experiences in containing high-level corruption have been identified in past studies (Buscaglia 2012). In all these cases, effective public policies (i.e., with the capacity to reduce both indicators of corruption and organized crime as explained above) were developed from the bottom up, with civil society networks deeply involved throughout the delineation and implementation stages. Buscaglia (2008, 2012) confirms a very strong level of association between high levels of organized crime and high levels of public sector corruption.

It is well known that public officials provide a logistical base for organized crime to expand and that these officials provide protection from prosecution. In this corrupt process, organized crime fragments the state when several criminal groups compete for power (e.g., Mexico). Therefore, policy recommendations to address organized crime containment need to simultaneously address the high levels of corruption within states as well as the private sector of countries where organized crime is present. Given that organized crime disregards political borders, the prosecution and judicial processing of organized crime should be an internationally coordinated matter. Results found in Buscaglia (2012) show that only 13 countries (in a sample of 108 UN member states) coordinate judicial action adequately. In this context, one crucial premise is that, on its own no state can tackle organized crime successfully.

There are five levels of organized crime-related penetrations of the state that need to be addressed by policymakers (Buscaglia and Gonzalez-Ruiz 2002). On the first level, we consider isolated acts of abuse of public office at the lowest operational levels of government agencies. On the second level, we take into account acts of corruption that occur on a very frequent basis within the lower payroll ranks of the state. On the third level, organized crime penetrates the mid-level management of public agencies in order to bias law enforcement operations, neutralize the regulation of financial markets, and place members of organized crime on the state's payroll. A fourth level of penetration of the state involves capturing the leaders of public agencies directly or indirectly who are in charge of containing organized crime (e.g., drug czars or chief of customs). By capturing this fourth level, organized crime is able to freeze entire institutions of the state, making them useful to the purposes of criminal enterprises. Finally, a fifth level of penetration involves the capture of political appointees at the highest level, such as

5 | The 13 countries are Austria, Botswana, Chile, Colombia, Costa Rica, France, Germany, Iceland, Italy, Japan, Netherlands, Spain, and the United Kingdom (Buscaglia 2012).

deputies, ministers, senators, supreme court justices, and presidents, all in order to generate a bias in policymaking and policy implementation. This fifth level of penetration of the state goes hand-in-hand with organized crime's financing of political campaigns. Buscaglia (2012) focuses on this fifth level of infiltration, which explains why – despite their ratification of international UN conventions – countries do not: seize and confiscate assets linked to organized crime; allocate state funding for social prevention of organized crime; allow for judicial independence and judicial accountability to develop judicial effectiveness; develop political cultures within which high-level corrupt officials acting within organized crime groups are brought to justice.

Administration of criminal justice: Laws in action vs. laws on the books

In order to address organized crime and high-level corruption, it is always necessary (though not always sufficient) to rely upon state-of-the-art legal instruments and institutional capacities to implement these laws. Buscaglia (2012) affirms the existence of legal instruments in 86 percent of countries worldwide (within a sample of 108 UN member states) – instruments that are fully compatible with the United Nations anticorruption and organized crime conventions mentioned before. Yet, only 13 of these UN member states fully implement laws against corruption and organized crime. The 86 percent of countries complying "in theory" versus the 14 percent of countries actually meeting practical compliance requirements represents a gap between the laws on the books and the same laws in action.

For example, very few nations are pioneers in the enactment of legal instruments addressing conspiracy to commit a crime. Among the 13 best-practice countries, membership or active participation in organized crime is criminalized, as well as illicit association with criminal activities. Legal transplants from the United States and France to developing countries inspired these criminal statutes around the world, especially within Latin America. Other nations have passed collective criminal statutes such as the so-called Mafia-type laws in Italy and in the United States, where legislators have enacted the Racketeer Influenced and Corrupt Organizations Act (known as RICO), which addresses patterns of criminal activities (or racketeering) within enterprises. In the latter, judicial authorities are required to indicate that an alleged RICO organization has a structure aimed at committing economic crimes and that there is a high probability that similar criminal activities will be committed in the future. These highly effective statutes have led to the dismantling of criminal groups.[6]

6 | French Criminal Code, Title V, Art. 450-1 to Art. 450-4; Italian Penal Code, Regio Decreto 19 Oct. 1930, N.1390, Art. 416 (Associazione a Delinquere) and Art. 416-bis (associazione a delinquere di stampo mafioso) and Spanish Criminal Code, Association Illicit Art. 515 y 516 Codigo Penal.

The analysis in this chapter addresses the most serious expressions of "transnational" organized crime in cases where international criminal organizations compete to corrupt high-level public officials with the sole purpose of avoiding punishment and acquiring market power to conduct illicit transactions within markets. Under weak public sector governance environments, traditional judicial deterrence frameworks (i.e., jail time) will simply not work and levels of organized crime and corruption within the public sector will increase. Under such a low-governance institutional environment (where public corruption is high), increasing economic resources that are aimed at expanding policing and expanding prosecutorial domains – or simply increasing sentencing on the books – will, paradoxically, translate into higher levels of organized crime. This occurs because high-level public officials receive incentives to extend and expand protective corruption rings, resulting in gain greater impunity and reducing actual expected punishment. This is known as "the paradox of expected punishment" (Buscaglia 2008), wherein added state punishment has the effect of increasing payments to public officials to avoid this punishment and/or increase violence; as a result, the state's good intentions of added punishment generate more criminal activities. Hence, in order to avoid this "paradox," public authorities should first aim to enhance asset forfeitures of criminal enterprises; undertake more successful prosecutions of illegal political campaign financing; and achieve more successful convictions of high-level corrupt officials. These preliminary actions will create a much more effective institutional framework for the successful prevention and dismantling of transnational crime (Buscaglia 2012).

The preventive, law enforcement, judicial, and intelligence tools contained in the UN Convention against Transnational Organized Crime provide a comprehensive set of policy measures to address private and public sector corruption. However, one needs to discover if these provisions have lived up to their potential in those states that have ratified the Convention. Berkowitz, Pistor, and Richard (2003) show that countries transplant international legal frameworks into their domestic legislations with varying degrees of success concerning actual implementation of these laws. Success in transplanting these frameworks is mostly determined by the nature of the process used to adapt the legal instrument to the existing national institutional structure as well as to the legal traditions of the importing country. Berkowitz, Pistor, and Richard (2003) have also shown that prior familiarity and cultural affinity with the transplanted legal instrument, regional proximity, gradual adaptation of the transplant to the local legal context, and frequent use of the legal instrument by legal intermediaries (e.g., judges and prosecutors) will lead to more effective implementation of the transplanted legal instruments over time.

Transplanting legal rules and standards found in the Palermo Convention (and Protocols) into domestic legislations and legal practices can be expected to follow this general pattern. In this context, a state framed within a rule-of-law consists of a social environment within which laws are socially delineated and per-

ceived as legitimate before later being enacted, interpreted, applied, and enforced by a judicial system in a coherent, consistent, and predictable manner. In other words, within the rule of law, the judicial and legal systems need to enjoy popular support. Hence, after enactment, the law is enforced through effective and efficient adjudication systems that citizens perceive as socially legitimate. In this kind of environment, a culture of legality prevails and lower crime rates emerge as a result. In contrast, systemic organized crime and corrupt practices constitute the outgrowth of a lacking rule of law. In these pernicious environments, corrupt "rings" of public officials emerge as a direct result of a partial or total breakdown of the rule of law within a society. Within society, public institutions are perceived as being divorced from people's lives and individuals break laws on a continual basis, justifying their behavior with the logic that "everyone does it." In such pernicious contexts, those who operate inside national political structures and electoral systems benefit from criminal contributions to their campaigns.

Many developed and developing countries have attempted to reform their laws and judiciaries through partial or total transplants in their efforts to strengthen democracy, to enhance the protection of human rights, and to foster private-sector investment. Yet, within the civil and criminal justice domains, an international comparative analysis demonstrates that legal and judicial reforms have shown mixed results around the world (Buscaglia and Dakolias 1999) due to their inability to build a widespread social and political consensus around these transplanted reforms. In this context, criminal infiltration of public agencies occurs on a frequent basis and is orchestrated by transnational organized crime groups. For example, high levels of human trafficking are always associated with high levels of corruption at the political level. The correlation between political corruption – coupled with a lack of international coordination among judicial systems and high levels of organized crime – and low human development indicators produces a "perfect storm" (Buscaglia 2008).

Institutional feasibility of democratic legal transplants

A democratic political system goes hand in hand with democratic law-making. International legal and judicial reform transplants cannot be labeled as democratic when they do not enjoy a widespread social and political consensus within the importing countries (e.g., Mexico). To a greater or lesser degree, actual implementation of the UN Palermo Convention and its Protocols requires the understanding of how feasible it is to transplant its clauses democratically into a multitude of domestic legal jurisdictions. The adoption of a common international legal definition of organized crime is not a necessary condition for addressing transnational crimes, yet it will make judicial and legal international cooperation less complex. When addressing specific cases of complex crimes – such as transnational human trafficking, transnational arms trafficking, transnational fraud, or transnational human smuggling of migrants – a common framework

for legal and judicial cooperation is required in order for prosecutors, police, and judges to cooperate across borders. As an example, before the signing of the UN Palermo Convention in December 2000, only 17 percent of all UN members included proper organized crime definitions on their criminal codes and statutes. By late 2011, 86 percent of all UN member states had adopted legally adequate definitions of organized crime. Moreover, member states established international coordination mechanisms contained within the Palermo Convention with a mandate to improve their capacity to combat and prevent private and public sector corruption through the monitoring and international technical assistance measures provided by of the Convention. This represents a carefully coordinated institutional framework to help ensure the international transplant of legal instruments. Nevertheless, coordinated mechanisms within the Palermo framework cannot explain the success of actual policy implementation within 13 of the 108 states assessed. The key element shared by this small group of states can be found in how these legal transplants were implemented. In all cases, legal and judicial reforms enjoyed widespread political and social support, which explains the success in implementing these legal and judicial reforms. In other words, the delineation and approval of the laws in the 13 country-group were based on the existence of legislative consultation channels seeking actual consensus with the largest number of civil-society stakeholders. This prior political and social work explains why – from an international pool of laws available for transplant – certain laws and institutions are more respected in best-practice countries.

Yet, legal and judicial reform transplants can also be effeted by the most powerful economic actors within a society through the political supply and demand exercised by lobby pressure groups. In other words, public/private interest groups (licit lobbyists or criminal groups) may feel threatened or benefit from alterations in the legal system that ultimately determine whether there is effective legal enforcement of these new laws. For example, Mexico's civil asset forfeiture laws were drafted and enacted to satisfy international pressures to identify and neutralize criminal assets. Yet, the Mexican asset forfeiture laws were designed by lobby groups. These private sector lobby groups exercised pressure on Mexican legislatures to include legal clauses aimed at making it very complex and costly for the state to seize and forfeit criminal assets.

Involving civil society

The criminal justice systems with the highest degrees of effectiveness in fighting organized crime and public sector corruption need to rely on citizens' support and on the willingness of citizens to collaborate with the state's law enforcement efforts in an operational manner. Without citizens' collaborative efforts, it is not possible for a judicial system to function.

Reforms of the criminal justice systems in best practice countries were not achieved without the help and support of non-state actors. Civil society groups are

required to monitor the degree of independence and accountability of the criminal justice system and its capacity to fight organized crime and public sector corruption.[7] In most countries, civil society networks lack the technical capabilities, and judicial systems do not allow civil society to exercise its monitoring role (e.g., Mexico and Russia). Having recognized the civil-society monitoring requirement early on, the 13 country-group following best practices have sought to build bridges between the public sectors and civil-society stakeholders. In this context, soft measures alone – such as civil-society demonstrations, speeches by leaders of civil-society, meetings between such leaders and high-level state officials, and integrity awareness campaigns – do not make much of a difference in containing criminal groups. Moreover, limiting civil-society participation to symbolic gestures without tangible results and tangible products (in terms of saving lives and providing services that make people's lives better) will just increase the public's levels of cynicism and result in lower levels of public participation in all future efforts.

As stated in Buscaglia (2008), organized crime and high-level corruption need to be addressed through a simultaneous two-pronged approach. Civil society-based operational social control networks that prevent organized crime and corruption (e.g., civil-society networks undertaking social audits of public local and central budgets) are needed. However, the capacities of judicial and intelligence officials to dismantle the vast networks of economic assets allowing for the transportation, production, and distribution capacities of organized crime within all types of markets need also be enhanced.

The relative success in fighting the Mafia-driven capture of the Italian state and the social fabric of Palermo has shown that public, school-based education campaigns – coupled with the recovery of public space by bringing together civil society networks and local governments – have been essential in hampering the pernicious effects of organized crime and public sector corruption.[8]

In addition, civil society actors such as victims' associations, bar associations, and law schools can play an important role in legitimizing and implementing legal and judicial reform processes. For example, establishing civil society bodies – each composed of a panel of lawyers and other members of the public acting as "court watchers" focusing on organized crime and public sector corruption cases – has proven to enhance the legitimacy of the judiciary in Colombia, Costa Rica, Indonesia, Italy, and the United States (Buscaglia 2012, 1997). In this context, for example, a network-based approach to civil-society monitoring of state institutions would go a long way to improve public sector performance, and reduce corruption. In this kind of scenario, specialized panels of civil-society networks focusing on public health providers (e.g., hospitals) would generate periodic reports addressed to a health ministry and followed by a monitoring process. Furthermore, special-

7 | These elements were all present in legal and judicial reforms implemented in Chile and Costa Rica (Buscaglia 2012).

8 | See Orlando (2001).

ized panels of civil society focusing on justice providers (courts) would generate periodic reports aimed at legal institutions. Specialized panels of civil society networks focusing on public education would generate periodic reports aimed at assessing the performance of schools and proposing mechanisms to improve such performance.

Countries that have been successful in containing organized crime and public sector corruption also incorporated state-of-the-art economic and financial policies, going far beyond the legal and judicial measures stated above. It is clear by now that in order to tackle organized crime, regulatory measures are required.

Following are some measures required within the economic-financial domain to contain organized criminal groups:

(i) addressing social vacuums left by state failures that create a "distance" between the state and the population's access to basic public services due to geographical, ethnic, economic, and political repression;
(ii) reducing the incidence and dimension of informal markets (which provide the economic inputs and human resources to criminal enterprises) by reducing the complexity and corruption in registering new companies or paying taxes;
(iii) improving the distribution of income and wealth;
(iv) introducing regulation of labor within markets previously declared illegal by the state (e.g., prostitution) and discarding the "illegality" approach to drugs by regulating the drugs market through the same type of food and drug administration laws applied to medicines;
(v) identifying, monitoring, seizing, and confiscating financial assets linked to the production and distribution of smuggled and counterfeit materials are part of a key strategy in any organized crime containment program. This requires moving far beyond money laundering statutes. Many illegal transactions forced upon average citizens (such as the forced-notarized transfer of land to organized crime) occur outside the financial domain, where financial intelligence units possess no jurisdiction. Yet, one could claim that the world's political landscape has been transformed within a decade, as, today, an increasing number of UN member states is enforcing disclosure of assets statutes and mutual legal assistance programs. In this context, bank secrecy has become less of an option.

The final impacts of non-punitive regulatory approaches to prevent organized crime have been very "modest" at best. Operational constraints remain due to the lack of operational capacities of police, prosecutors, and judges when required to handle cases involving financial investigations. At the same time, civil society networks are still operationally underdeveloped in most countries, as they have limited capacities to save lives and to monitor public officials through well-funded networks. In this scenario, the development of democratic means to prevent

and contain organized crime requires improvements in both state and non-state mechanisms.

Conclusions

Based on the analysis presented in previous sections, one can conclude that the most effective policy measures against transnational organized crime mainly rest on three pillars: (i) the introduction of more effective judicial decision-making controls in the hands of civil society networks that can lead to reductions in the frequency with which the discretion of procedural and substantive criminal courts is abused; (ii) the higher frequency of successful asset forfeitures of legal businesses and individuals linked to criminal enterprises – all based on effective financial intelligence systems that can generate evidentiary material to ensure the systematic dismantling, confiscation, and recovery of assets in the hands of legal firms providing the transportation and production infrastructure needed for the exploitation of human trafficking; and (iii) the presence of government and/or non-governmental preventive programs addressing the health, labor, and educational needs of high-risk groups of youth falling under the influence of criminal enterprises.

Furthermore, if one hopes to eliminate the social and economic roots of criminal enterprises, public policies should be much more focused on filling the social vacuums (e.g., lack of social investment in public health, lack of education options for youth, lack of social infrastructure, and lack of adequate job training) and less concerned about repressive operations. In addition, disrupting the operations of organized crime requires civil asset forfeitures, thus reducing the illicit funds that can expand public corruption rings within the public sectors. At the same time, developing a state infrastructure to address civil service reforms as well as developing auditing capacities of public institutions and public sector officials have also shown unparalleled power to reduce corruption. Finally, regulatory approaches to markets that are in the hands of organized crime (e.g., drugs and prostitution) need to be addressed through food and drug regulation and labor laws, coupled with social prevention in order to obtain the desired containment.

Certainly, it would be quite naïve to think that ratifying and enacting United Nations conventions (and their protocols) will be enough to successfully combat organized crime. Moreover, one should have no illusions that all 22 types of organized crimes can be contained, given the scarcities of human and financial resources that all nations face. In this context, public policy must give priority to reducing the most predatory organized crimes (e.g., human trafficking and kidnapping) through the criminal justice systems, while better regulating non-predatory crimes (e.g., gambling and adult prostitution) through economic and labor policies.

The reforms to the judicial and intelligence systems described in the previous sections – as applied in best practice countries – have always required a consen-

esus prior sociopolitical consensus that encompasses legislative, executive, judicial, and civil society domains and with actors willing and able to design, implement, and support "politically painful" reforms. The afore-mentioned gaps between the Palermo Convention-related domestic laws on the books and the same laws in action will be reduced whenever the political will to enact legal reforms coexists with the technical capacities to implement these reforms. Failures to fully implement much-needed institutional improvements have been mostly linked to the lack of a governmental long-term commitment within authoritarian regimes (e.g., North Korea, Russia, and Syria) or in political systems with scarce political competition (e.g., Jordan and Venezuela), or in environments with political instability characterized by chronic social inequities (e.g., Mexico and Paraguay), in failed states subject to armed conflicts (e.g., Afghanistan and Somalia), and in countries undergoing political transitions (e.g., Mexico, Nigeria, and Pakistan). These state and political failures have also been characterized by legal transplants of the Palermo Convention into domestic legislations without true implementation (i.e., huge gaps between laws on the books and laws in action).

The above lessons from international experience must be taken into account whenever national and international authorities plan strategies to address transnational crime and public sector corruption. Yet, it is crucial to remember that combating and preventing organized crime requires first and foremost addressing state failures in ensuring the exercise of human (civil, political, economic, social, and cultural) rights while, at the same time, eliminating the fragments of criminal enterprises operating within the state. In this context, when governments use the term "war" against organized crime, many public officials may be unaware of the fallacy involved: A repressive "war" of the state against organized crime is equivalent to a war of the state against itself.

References

Berkowitz, D., K. Pistor, and J.-F. Richard. 2003. Economic development, legality, and the transplant effect. *European Economic Review* 47(1): 165–195.

Buscaglia, E. 1997. Judicial corruption in Latin America. In: Essays in Law and Economics. Amsterdam, Netherlands: Kluwer Press.

———. 2008. The paradox of expected punishment: Success and failures in the fight and prevention of organized crime. *Review of Law and Economics*.

———. 2012. On best and not so good practices for addressing high-level corruption worldwide: An empirical assessment. In: International Handbook on the Economics of Corruption, vol. 2. Northampton MA: Edward Elgar Press.

Buscaglia, E., and M. Dakolias. 1999. A comparative international study of court performance indicators: A descriptive and analytical account. Legal and Judicial Reform Series. Washington, DC: The World Bank.

Buscaglia, E., and S. Gonzalez-Ruiz. 2002. How to design a national strategy against organized crime in the framework of the United Nations' Palermo

Convention. In: The fight against organized crime. 23–26. Lima: United Nations Office on Drugs and Crime.

Buscaglia, E., and J. van Dijk. 2003. Controlling organized crime and public sector corruption: Preliminary results of the global trends study. Forthcoming in *Forum*. Vienna: United Nations, 4–35.

Fajnzylber, P., D. Lederman, and N. Loayza. 2001. Inequality and violent crime. Forthcoming in the *Journal of Law and Economics*.

Financial Action Task Force on Money Laundering. 2000–2001. Report released. Paris.

Milhaupt, C., and M. West. 2000. The dark side of private ordering: An institutional and empirical analysis of organized crime. *University of Chicago Law Review 67*.

Orlando, L. 2001. Fighting the Mafia and renewing Sicilian culture. Encounter Books.

Schelling, T. C. 1967. Economic analysis and the criminal enterprise. *Public Interest* 7: 61–78.

Shelley, L. I. 1995. Transnational organized crime: An imminent threat to the nation-state? *Journal of International Affairs* 48 (Winter): 463–489.

Williams, P. 2001. Organizing transnational crime: Networks, markets and hierarchies. In: Combating transnational crime: Concepts, activities and responses. London: Frank Cass.

World Bank Group. 2002. World Bank Group work in low-income countries under stress: A task force report.

World Economic Forum. 2000. Organized crime imposes cost on businesses. The global competitiveness report. WEF Press.

Internet references

United Nations Convention against Transnational Organized Crime and the Protocols thereto at: http://www.odccp.org/odccp/crime_cicp_convention.html