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To cite this article: Jay S. Albanese (2018) Countering Transnational Crime and Corruption: The Urge to Action Versus the Patience to Evaluate, Justice Evaluation Journal, 1:1, 82-95, DOI: 10.1080/24751979.2018.1478234

To link to this article: https://doi.org/10.1080/24751979.2018.1478234

Published online: 28 Aug 2018.

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Countering Transnational Crime and Corruption: The Urge to Action Versus the Patience to Evaluate

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ABSTRACT
Dramatic moves have occurred in countering transnational crime since the turn of the twenty-first century. Binding international agreements, such as the UN Convention against Transnational Organized Crime, and the Convention against Corruption, are examples of nearly universally adopted principles and mandates that were difficult to foresee a generation ago. What is less clear is the extent to which these moves indicate true progress, versus actions and efforts that will ultimately be ineffective. This paper assesses significant changes over the last 20 years in responding to transnational organized crime, corruption and global injustice, and points to several efforts to evaluate their effectiveness. Specific content areas are identified in which ongoing evaluation is needed at the intersection between the urge to take action and the patience to evaluate.

ARTICLE HISTORY
Received 2 May 2018
Accepted 9 May 2018

KEYWORDS
Evaluation; transnational organized crime; corruption; injustice

Introduction
There has been a great of activity globally in the arena of transnational crime and corruption since the turn of the twenty-first century. Much of this activity is related to organized crime, corruption, and human rights, responding to the globalization of these concerns. Several binding international conventions, combined with regional and worldwide efforts to prevent and respond to transnational criminal activity, have been far-reaching and extraordinary.

Nations and international organizations have realized, however, that without good assessments of their initiatives, they never know the true impact of their investments. Without evaluation, we will never know if we are wasting our time on unworkable “solutions,” or making existing problems worse. The issues are little more complicated at the international level, but not impossible, and there are a few good examples to point to. There are lots of opportunities to perform needed work around the world, if the proper perspective and patience is mustered to evaluate the efforts already underway.

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Background

The world is changing, and sometimes for the better. The truly globalized world has arrived with computers, handheld technology, and access to the Internet possessed by a significant proportion of the world’s population. The number of Internet users increased from 738 million in 2000 to 3.2 billion in 2015, raising Internet access up from 7% to 43% of the global population in just 15 years (Davidson, 2015; ITU, 2016). This access to information via technology has changed the way everyone views the world, and it has removed the guesswork in understanding what is going on elsewhere around the globe. News can be accessed instantaneously, international travel has never been within the grasp of more people, and the ability to find information, documents, hearings, and debates via the Internet on the entire range of issues facing humankind is impressive and perhaps overwhelming.

On the other hand, conflict areas exist in large numbers around the world. Forced displacement of civilians is at the highest level since World War II, and conflicts are affecting and killing more civilians (non-combatants) than ever before. Yet interpersonal, gang and organized crime-related violence is still killing more people than political violence globally (Alexandre, 2016; United Nations Office on Drugs and Crime, 2014). This situation contributes to internal displacement, irregular migration flows, and an imbalance in the world labor market, as many are forced to leave their home countries to avoid oppression, war, or simply find work. Corruption and organized crime within countries are both a driver and a consequence of conflict and the inability to enforce the rule of law (Herzfeld & Weiss, 2003; Patrick, 2017). Access to information, communication, and travel has never been better, but growing conflict areas, terrorism, and organized crime (which often rise to exploit the criminal opportunities that emerge from civil disorder and conflict) obstruct progress. Rather than entering a new renaissance period, the world seems to be more chaotic, rather than making steady progress forward.

There is a tendency around the world to see problems coming, but a failure to take corrective action until a catastrophe occurs. These dramatic incidents heighten both public and political desire to “fix” the problem immediately. In the US, this tendency has been well documented with many laws named after specific crime victims. Amber’s Law, Meghan’s law, and many others were named after crime victims (and to ensure their enactment in a post-tragedy atmosphere) in order to improve responses to sex crimes, sex offenders, and assaults of various kinds (Merlo & Benekos, 2006; Wood, 2005). The problem arises when these laws are enacted quickly without reliance on systematic data (i.e., rarely are shocking crime events representative of a large category of offenses or offenders). The result is legislative “solutions” based on pre-existing ideology or outrage, rather than on the true needs of the situation. Political ideology as a driver of public policy in the face of dramatic events often generates its own consequences, such as mass incarceration, overuse or misapplication of drug laws, and related ideas that target “other” groups inappropriately – often minorities and new immigrants (Miller, 1973; Reiman & Leighton, 2016; Zucco, 2009).

Other outcomes of these kinds of interventions mandated by popular legislation (without the benefit of careful analysis beforehand) result in wasted money and resources on misdirected strategies, or tactics that do not address the underlying
problem. After a period of a few short years, the intervention is sometimes pulled, without fanfare, or an after-the-fact evaluation is funded which uncovers the non-empirical approach to the original intervention. Of course, there are many examples where prevailing “wisdom” was wrong about a particular crime problem and, long after the intervention, an evaluation conducted to demonstrate this fact. Police responses to domestic violence, the DARE program (Drug Abuse Resistance Education), no plea bargaining policies in prosecutor’s offices, and mandatory sentences, are examples from a long list of interventions that either did not work, or caused unforeseen problems of their own (McCord, 2003; Petrosino, Turpin-Petrosino, & Bueller, 2003; Seiter & Kadela, 2003; Sherman, Farrington, Welsh, & Mackenzie, 2002).

The Organized Crime Convention

The Organized Crime Convention was adopted in November 2000 by the United Nations General Assembly, following several years of drafting and negotiations (UNODC, 2006). The Convention was signed by Member States in Palermo, Italy, and entered into force in 2003, once the first 40 countries ratified it. Since then, a total of 188 of the 193 Member States of the United Nations (97%) have ratified this binding agreement (UN Convention against Transnational Organized Crime, 2018).

The Convention resulted from international recognition of illegal cross-border activities and the impact of organized crime on citizens, societies, governments, and the economy.

In the words of then Secretary-General Kofi Annan, “If crime crosses borders, so too must law enforcement. If the rule of law is undermined not only on one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings” (United Nations Office on Drugs and Crime, 2003, p. iii).

Italian Judge Giovanni Falcone was a participant at the United Nation’s first meeting of the Commission on Crime Prevention and Criminal Justice in 1992. Tragically, he and his wife, Judge Francesca Morvillo, together three of their police escorts, were murdered by members of the Sicilian Mafia one month later in May 1992. The tragedy occurred “as their cars passed over a culvert where mafiosi had hidden 500 kg of explosives” (Schneider & Schneider, 2003).

This incident, together with the perceived power of mafia groups in Italy, was a driving force in the negotiations for the Organized Crime Convention. Member States of the UN could not come to consensus on a universal definition of organized crime, but they agreed on the definition of an organized crime group, and that all parties to the Convention would have to criminalize participation in an organized crime group, money laundering, corruption, and obstruction of justice. The scope of the Convention is limited to offenses that are prepared, committed, or has impacts in more than one country. Given the ways in which supply, demand, and profits from illegal activities are now circulated globally, a great deal of organized crime is transnational organized crime.
The Organized Crime Convention contains a range of measures to enable and facilitate legal changes and cooperation between States parties. These measures include:

- Extradition (article 16),
- Transfer of sentenced persons (article 17),
- Mutual legal assistance (article 18),
- Joint investigations (article 19),
- Transfer of criminal proceedings (article 21),
- Law enforcement cooperation (article 27),
- Jurisdiction to prosecute and punish the Convention offences (article 15),
- Liability of legal persons (article 10),
- Prosecution, adjudication, and sanctions (article 11),
- Confiscation and seizure of proceeds of crime (article 12),
- Protection of witnesses and victims (articles 24–26),
- Special investigative techniques (article 20).

The United Nations Office on Drugs and Crimes (UNODC) is the guardian of the Organized Crime Convention and its implementation. UNODC offers legislative guides, model treaties and laws, and technical assistance for assistance to individual nations and regional bodies in improving their capacities against transnational organized crime (United Nations Office on Drugs and Crime, 2018a, 2018b). The Convention also includes three separate protocols directed at human trafficking, migrant smuggling, and firearms trafficking, which have distinct requirements of their own for ratifying countries.

**The Convention against Corruption**

The UN Convention against Corruption entered into force in December 2005. Whereas the Organized Crime Convention requires ratifying nations to criminalize corruption within the framework of organized crime, the Convention against Corruption goes further, specifying different forms of corruption, and providing a legal framework for criminalizing and responding to it. The Convention against Corruption is the only legally binding universal anti-corruption instrument (Argandona, 2007; United Nations Office on Drugs and Crime, 2004).

The Convention against Corruption approaches the problem from four different perspectives: prevention, criminalization, international cooperation, and asset recovery (United Nations Office on Drugs and Crime, 2012). The scope of the Convention is broad, and ratifying countries agreed to the following specific mandates:

- Criminalize bribery, embezzlement of public funds, trading in influence, and the concealment and laundering of the proceeds of corruption.
- Establish prevention efforts including anti-corruption bodies enhanced transparency in public service and in the financing of election campaigns and political parties.
- Provide for recovery of assets diverts to others countries.
- International cooperation in enforcement.
A Conference of Parties meets every other year among ratifying nations to assess implementation, assistance, and sanctions.

As of 2018, there were 183 State parties to the Convention, representing 95% of the UN membership (which includes every country in the world except Kosovo, Palestine, and Vatican City) (Rosenberg, 2017; United Nations Office on Drugs and Crime, 2018c).

Like the Organized Crime Convention, the Convention against Corruption requires State parties to introduce criminal offences to cover a wide range of acts, including acts committed in support of corruption (obstruction of justice, trading in influence, and the concealment or laundering of the proceeds of corruption). The Convention against Corruption also addresses corruption in the private sector and provides for the protection of reporting persons (whistle-blowers), witnesses, victims, and experts. The section on international cooperation contains provisions quite similar to the Organized Crime Convention, including mutual legal assistance, extradition, and confiscation and seizure.

The purpose of the two binding international instruments on transnational organized crime and corruption is to enable countries to improve their capacity against these crimes, and to enhance their prosecution and international cooperation mechanisms. Some consider corruption and organized crime to be the two most serious crimes of all, because they undermine the rule of law, create serious economic harm, result in violations of human rights, and illicitly protect those committing a range of other crimes (Albanese, 2011; Buscaglia, 2003; Rose-Ackerman & Palifka, 2016).

Assessing the impacts in countering transnational crime and corruption

These two binding international conventions enacted 15 years ago, and now ratified by nearly all nations of the world, should have a dramatic impact on the prevention and response to organized crime and corruption. But the evidence, thus far, has been mixed.

On the positive side, the Conventions have had the effect of focusing public and political attention on the issues of transnational organized crime and corruption, developing consensus among national laws, the methods for international cooperation in investigations and prosecutions, and a focus on the confiscation of assets and repatriation of assets illicitly moved from one country to another. This level of international consensus was difficult to imagine 20 years ago. The global focus on human trafficking, migrant smuggling, witness protection, extradition, and many other aspects of these international agreements is a clear sign of international harmonization regarding the seriousness of these problems and the methods needed to respond to them more effectively.

On the other hand, some expectations remain unfulfilled. The implementation of the Conventions has been uneven (Bolster, 2016; Brunelle-Quraishi, 2011–2012; Gastrow, 2018). Both Conventions have a formal Conference of the Parties, which supports nations in their implementation of the Convention requirements. The actual implementation of the Corruption Convention by State parties is evaluated through a peer-review process in which two national peers review each State party – one from the same global region, which are selected by a drawing of lots. A larger group oversees the peer review group process with the objective to obtain compliance with
Convention provisions. The Organized Crime Convention does not yet have a formal peer review mechanism to enforce its provisions, but biannual meetings are held among State parties to review implementation of various provisions.

The Conference of Parties, which guides the implementation of each of these Conventions, is designed to insure that the agreements result in actual changes in practice. Figure 1 illustrates the connections among transnational crime, international agreements, and the need for cooperative efforts in their enforcement. No agreement is self-executing. They require law enforcement and judicial cooperation that results in investigations and prosecutions (Aromaa & Viljanen, 2005; Hartfield, 2008). Otherwise, the international agreements lack meaning in practice. Therefore, the implementation of the agreements is the real measure of success of international cooperation (Albanese, 2005).

Figure 1 illustrates the cycle of building consensus, followed by agreements and implementation. The weakness is shown in the last two circles of the figure, where evaluation, and revising strategy and implementation have not occurred in a systematic way.

**What is missing, yet needed?**

What is missing is a true evaluative approach to many of these provisions, which have the potential to improve the situation in responding effectively to transnational
organized crime and corruption. Major tools incorporated into the Organized Crime and Corruption Conventions, and other legislation and agreements, have not been evaluated to determine their effectiveness or cost–benefit. There are many examples of commonly used tools employed in organized crime and corruption cases, including electronic surveillance, witness protection programs, racketeering laws, use of informants, undercover and sting operations, citizen investigation commissions, witness immunity, mutual legal assistance, deferred prosecution agreements, and government monitoring of labor unions.

There have been occasional reports about these methods, but no systematic assessment of the kinds of cases in which they appear to be most effective, their costs, and any unanticipated impacts. As one author described the situation with mob-controlled labor unions, "it is incredible that more than 20 years of civil RICO [racketeering] litigation against racketeer-ridden unions has been conducted without any evaluation whatsoever…successes and failures have never been identified, much less documented or analyzed" (Jacobs, 2006, p. 261). A review of witness protection programs in 12 countries (Canada, Germany, Ireland, Italy, Jamaica, Kenya, New Zealand, Philippines, South Africa, UK, South Africa, and USA) found “few attempts have been made to systematically evaluate witness protection programs in any jurisdiction” (Dandurand & Farr, 2010). Electronic surveillance has found growing acceptance as a law enforcement tool in organized crime cases, but evaluation has not been conducted of the cost–benefit of its high cost, human rights and privacy protections, and effects on prosecutions and convictions (Albanese, 2015; UNODC, 2009). Issues also remain about the scope of the intrusiveness of emerging technologies such as night-vision devices, thermal imagers, biometric devices, and encryption devices. The desirability of electronic surveillance as an investigative tool depends on a careful review, not just of its use in practice, but evaluation that accounts for its strengths and limitations. The same lack of evaluative evidence exists for the tools of mutual legal assistance, use of informants, undercover operations, witness immunity, racketeering statutes, and related investigative and prosecution tools (Kowalczyk & Sharps, 2017; Love et al., 2008; Schreiber, 2001; Sheptycki, 2017). Without such knowledge it is not known in which cases these tools are appropriate, useful, ineffective, or cause unanticipated outcomes.

The United Nations, and others, has set forth important criteria to be used in developing good evaluations of these tools and policies, but the evaluations themselves have been few and far between (Marx, 1982; Miller, 1987; Sheptycki, 2017; Trotter, 2012; UNODC, 2008, 2016). This is likely due to issues of funding, and the tension between the urge to action versus the patience to evaluate.

Of course, the failure to evaluate our experience is common in criminal justice with few high quality evaluations, but recent years have shown renewed interest in evaluation as the best (and only) way to determine what a “best practice” might be, and under what circumstances that occurs (Braga & Weisburd, 2013; Elliott, 2018; Petersilia, 2004; Petrosino & Lavenberg, 2007; Soukara et al., 2009). So “best practice” has been used quite loosely throughout criminal justice, because without evaluation (rather than mere experience alone) we never can tell objectively what a best practice might be.
Change on the horizon?

In some ways, the glass might be half-full, when it comes to organized crime and corruption. The global consensus reached over the last 20 years has been remarkable in focusing on specific kinds of conduct, criminal justice responses, and prevention efforts. This move toward global consensus is necessary to respond effectively to problems that cross borders. The missing evaluation piece is slowly getting more attention as a crucial approach in order to spend time and resources most effectively.

Crime proofing legislation

One example of this kind of evaluation is “crime-proofing” of legislation. The crime proofing of legislation was developed at the Transcrime Institute at Università Cattolica delSacroc Cuore in Milan, Italy. The idea behind it is that legislation is often passed without consideration of potential unintended effects. A procedure to conduct this kind of predictive assessment was developed (Savona, 2006).

For example, the European Union proposed new tobacco control policies that evaluators examined closely prior to the laws being implemented. The evaluation found that the European illicit market accounts for nearly 10% of total tobacco consumption, and that new proposed rules would increase smoking prevalence by supplying cheap products, and cause significantly higher damage to human health, given the reduced controls on and quality standards of illicit products. In addition, government revenues would decrease from a negative impact on the legal tobacco market (Calderoni, Savona, & Solmi, 2012; Savona, 2006). There is growing attention to “crime proofing” as a method to anticipate outcomes prior to new measures being implemented (Bosetti, Cockayne, & de Boer, 2016).

Risk assessment

Another approach is the risk assessment approach to evaluate efforts and their implementation. To what extent is the risk of victimization being reduced (by individuals, markets, businesses, or governments)? The risk assessment method was developed in response the problems of measurement of organized crime and corruption and the need for specific guidance for interdiction and prevention efforts. This method attempts to measure the risk of organized crime by assessing product markets and flows.

The UN’s report The Globalization of Crime: A Transnational Organized Crime Threat Assessment offered a global overview of illicit product markets and flows, changing the unit of analysis for evaluation from high-risk individuals or criminal groups to high-risk markets (UNODC, 2010). Other regional assessment reports have subsequently been developed that focus on the transnational organized crime problems in specific world regions to allow for more localized guidance (UNODC, 2013a, 2013b, 2013c). The nature of this work is depicted in Figure 2, which illustrates how measures, trends, and flows of illicit trafficking can be used as a basis to assess changes in risk needed to evaluate the impact of intervention and prevention efforts.
The data on which these assessments are based are taken from existing information from police arrests, seizures, court records, media reports, NGO reports, and experts in multiple countries who have first-hand exposure to these illicit product markets. The markets included are trafficking in persons, smuggling of migrants, cocaine and heroin trafficking, firearms trafficking, trafficking in wild flora and fauna, counterfeit products, maritime piracy, and cybercrime.

The effort to examine product flows and the influences of supply, demand, competition, and law and enforcement capacity has gained traction in the professional and academic communities as a way to evaluate the nature, extent, and changed for different manifestations of transnational organized crime (Albanese, 2008; Bisogno, 2016; Castle, 2008; Klerks, 2007; Midgley, Briscoe, & Bertoli, 2014; Riccardi & Berlusconi, 2016; Vander Beken, 2004; van Dijk, 2007). Risk and threat analyses based on careful evaluation of individual product markets is a promising approach to capturing both the magnitude and changes in transnational organized crime in different world regions.

When assertions are made about what measures best serve the purposes of securing rule of law, justice, and the public welfare, we must ask, “How do we know this?” That is the essential question of evaluation, which crime-proofing and risk assessment attempt to answer in a predictive way.

**Discussion**

Holding back the urge to action for the patience to evaluate requires an appreciation of the cost–benefit of this approach. Because many initiatives in public policy are the result of catastrophic events (major organized crime frauds, human trafficking deaths,
terrorist attacks), public officials often rush to judgment, based on a single event. A momentary step back to ask the question “how do we know these funds and resources are being well spent,” can prevent waste, as well as the creation of unanticipated harms (e.g., racial or ethnic profiling, mass incarceration, and easy adjustments by criminal groups to the criminal justice response) (see Beare, 1997; Drake, Aos, & Miller, 2009; Leeuw, 2005; Piquero & Brame, 2008; Weisburd & Piquero, 2008).

The patience to evaluate requires an appreciation of its value. Most of those holding public policy positions have no training or experience in evaluation, or appreciation of its importance. The result is shortsighted decisions. Evaluation requires only a good design, some funding, and a reasonable period of time to execute it. In one case, recounted to the author, a researcher asked a prosecutor of human trafficking cases about evaluating this effort by asking the question, “Sooner or later isn’t the legislature going to ask how have human trafficking enterprises have been impacted after this large expenditure of resources and effort over multiple years?”

After being provided a brief summary of what an evaluation design might look like, the prosecutor responded, “If I had those funds, I would hire another prosecutor.” This response shows a lack of appreciation for the question, and the importance of evaluation in sustaining support for prevention and intervention efforts over the long term. The public has a right to ask, and to know, what the impact of the public investment has been. Without an account beyond “we arrested and prosecuted a lot of people,” neither the public nor future policymakers will be persuaded to continue the effort.

Figure 3 illustrates the common disjunction between implementation and evaluation. Implementation of a plan of action asks the question, “Are we carrying out what we intend?” This is simply a measure of the extent to which actions correspond to the words behind them. The second step is assessing the implementation to see if the implementation process is done with attentiveness and vigilance. The third step often never occurs. That is, evaluating the effectiveness to see if we are having any impact on the problem, once it is determined that the implementation has been carried. It is this third step that is too often missing after the implementation of international
agreements (and many criminal justice programs in general) (see National Academy of Sciences, 2018).

Conclusions
It has been the objective of this paper to set forth the evaluation needs that must follow the binding international agreements that have occurred in countering transnational crime and corruption since the turn of the twenty-first century. The UN Conventions against Transnational Organized Crime and the Convention against Corruption are examples of nearly universally adopted principles and mandates that require specific prevention and intervention actions on the part of nations around the world.

An examination of these initiatives shows a valiant worldwide effort that resulted in global consensus on the major problems of transnational organized crime and corruption, and some of the dedicated efforts to implementing these initiatives in practice. What has been missing is a similarly dedicated effort to evaluating the effectiveness of these efforts. Examples were provided to show the promise of crime proofing and risk assessment in conducting evaluations of this kind, but traditional evaluation methods are required to evaluate the impact of specific tools and programs in order to evaluate these methods against sophisticated forms of transnational crimes. Evaluation is sorely needed at the intersection between the urge to take action and the patience to evaluate.

Disclosure statement
No potential conflict of interest was reported by the author.

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