25 Governing the international political economy of transnational environmental crime

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Transnational environmental crime (TEC) involves the trading or smuggling across borders of species, resources and pollutants in violation of prohibition or regulation regimes established by multilateral environmental agreements (MEAs) and/or in contravention of national law. This includes the trafficking of illegally logged timber (sometimes called ‘stolen’ timber); the illegal trade in endangered, threatened and some protected species; the black market in ozone-depleting substances (ODS) and other prohibited or regulated chemicals; and the transboundary dumping of toxic and hazardous waste, including electronic waste (e-waste).

The expansion of TEC black markets is a consequence, albeit an unintended one, of a globalised liberal political economy. Globalisation, Peter Andreas (2002: 40) has argued, ‘creates a new opportunity structure for those involved in criminalized markets’. As with other forms of criminal endeavour, crimes associated with illegal extraction, harvest and waste have become increasingly transnationalised as those involved take advantage of freer trade, increases in the frequency and volume of commodity shipments, fewer border controls, and easier transfers of funds through global financial and banking systems that offer more opportunities to launder profits into ‘legitimate’ enterprise. TEC is also, somewhat paradoxically, a function of the growth in global environmental governance. The entry into force of a series of multilateral environmental agreements designed to regulate activities which generate negative environmental externalities, or in some cases to prohibit the transboundary movement of the products of that activity, has created incentives for increasingly profitable black markets.

The first section of this chapter introduces the main forms of transnational environmental crime: wildlife smuggling, timber trafficking, black market in ozone-depleting substances and the illegal trade in hazardous waste. The second section focuses on ‘relationships of exchange between traders [and] markets’ (Edwards and Gill 2002: 204) as a form of enterprise crime that operates through transnational networks. Those networks function within the illicit space and across the boundaries between illicit and licit economies. The third section examines the form and function of TEC governance as a response to that illicit form of transnational political economy. As explained there, ‘governing’ TEC has been driven by the need to combat public ‘bads’ (rather than provide public goods) through regulating or preventing trade and pursuing illegal profits. The processes by which this arena of illicit international political economy is governed reach deep into law enforcement and transnational crime prevention. They rely on public and private spheres of action and a complex, transnational multiple-actor base. The governance complex is fragmented, but also increasingly (perhaps somewhat counter-intuitively) focused, given form through multilevel partnerships and networks that seek to enhance governance.
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The final section draws conclusions.

TRANSNATIONAL ENVIRONMENTAL CRIME

The UN Convention against Transnational Organised Crime has a rather tortuous definition of what makes criminal activity transnational. A crime is transnational if it is committed in more than one state; is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state; or is committed in one state but has substantial effects in another state (UNGA 2000: article 3). André Bossard, former Secretary General of the International Criminal Police Organization (Interpol), has a much simpler definition: the activity must be recognised as a criminal offence in at least two countries as a result of international or national law and a border must be crossed (cited in Fisman and Andres 1999: 5). In the case of transnational environmental crime, this border-crossing can involve the perpetrators, the products and/or the illegal profits.

This illegal trade relies on a political economy of ‘lootable commodities’ – those that are ‘high in value but have low economic barriers to extraction’ (Farah 2010: 2) – and ‘uncritical markets [that] ensure that there are buyers for goods at the right price, regardless of how they are obtained, processed or transported’ (Nellemann et al. 2010: 34). As with all other forms of illegal trade, figures on the exact size and value of transnational environmental crime markets rely partly on extrapolation from actual seizures and partly on speculation and guesswork. These markets are driven by both price and cost differentials: when expected returns (price) are higher than for analogue legal trade, when ‘demand exceeds the supply of legal products’ (in the case of timber, for example) (OECD 2011: 7), and when compliance with regulations (cost) can be avoided through illegal practices, as is the case in the black markets in ODS and hazardous waste.

The Illegal Wildlife Trade

Wildlife smuggling constitutes a serious threat to species and biodiversity. Between 2003 and 2005 more than 60 per cent of the rhinoceros populations in Kenya and Somalia were killed by commercial poachers (Sims 2006). Rhino poaching in South Africa has increased almost 25-fold, from 13 animals killed in 2007 to 330 in 2010 (CITES 2012). The numbers of tigers has been so severely reduced by the demand for skins and traditional Asian medicines that fewer than 3200 are estimated to remain in the wild (TRAFFIC 2011: 4). The profits can be high even for small-scale operators. Cut pieces of illegal ivory have been reported to sell in Vietnam for the equivalent of close to US$1900 a kilo (WWF 2009). Rhino horn is said to be more valuable than gold and can exceed the price of class A drugs (Gwin 2012). An individual endangered Lear’s Macaw can sell for US$60000 on the illegal market (Giovanini 2006: 26).

As much as 25 per cent of the international trade in wildlife and plants is thought to be illegal. While supply and the pursuit of profit is clearly a factor in this trade, which is conservatively valued at US$10 billion a year (CAWT 2007; Haken 2011: 11), the chains of custody are primarily demand-driven. Private collectors and zoos clamour for
rare and unusual species of birds, animals, reptiles and plants; research facilities want laboratory animals; and niche consumer markets create demand for traditional Asian and African medicines and exotic foods, such as reef fish and bushmeat. The trade is also driven by a far more mundane demand for unusual pets, such as Chinese threestriped turtles and the slow loris; and for fashion items, such as ivory, tortoise-shell and luxury shahtoosh shawls made from the down hair of the critically endangered Tibetan antelope (which has to be killed for its wool). Developing countries are not the only ones vulnerable to the illegal wildlife trade. Wild birds of prey are smuggled from the United Kingdom for the falconry market in the Middle East. Countries such as Australia and New Zealand are prime targets for poachers and smugglers seeking wild birds, reptiles and native insects for sale to international collectors.

Timber Trafficking

The trade in illegally logged timber – described by one observer as being of ‘industrial scale’ (Lawson 2004a: 1) – is a significant component of what is an otherwise legal, although often unsustainable, global industry. Illegal logging, which takes place in some of the world’s most vulnerable forests, is an umbrella term for a range of activities: extraction crimes, such as logging without a licence or logging inside protected areas or national parks; transportation crimes, involving the smuggling across borders of illegally logged or stolen timber and timber products, or timber species that are protected from trade under the Convention on International Trade in Endangered Species (CITES); and processing crimes, such as the fraudulent labelling of timber destined for export (timber laundering). It is a major driver of deforestation, habitat destruction and species endangerment.

While not all illegally logged timber is destined for transnational trade, there is almost certainly a close relationship between the extent of illegal logging and the extent of timber trafficking. Illegal logging is reported to account for 50 to 90 per cent (by volume) of forest output in tropical producer countries, and between 15 and 30 per cent of global output (Nellemann 2012: 6). In Indonesia, for example, where at its height somewhere between 51 per cent and 80 per cent of timber cut was thought to be illegally logged (UNODC 2010: 167), the equivalent of 300,000 million cubic metres of illegally harvested timber is smuggled out of the country each month (WWF, n.d.).

The illegal timber trade is also sustained by the ease of commodity displacement with loggers and traffickers turning to new and more profitable timber species – or to manufactured products – as other species attract (unevenly implemented) protection status under international or domestic law. This form of TFC is driven in part by a market for cheap timber and timber products. But the trade also reflects demand for high-value species. Five hundred rosewood logs seized by Thai customs in August 2010 were estimated to be worth US$1.5 million on the Chinese market (EIA 2012: 3). Illegally sourced mahogany can fetch more than US$1,700 a cubic metre (Urrunaga et al. 2012: 3). The market might generate profit for timber traffickers, but it is costly for governments and legitimate industry. The World Bank (2006) conservatively estimates the cost to timber-producing countries in lost government revenue at about US$5 billion a year. The trade in illegally logged timber depresses world timber prices by something between 7 and 16 per cent because the companies and agents involved pay no taxes, fees or other forms
research facilities want id for traditional Asian bushmeat. The trade is such as Chinese three- ivory, tortoise-shell and ely endangered Tibetan are not the only ones uggled from the United s such as Australia and king wild birds, reptiles as being of 'industrial t is an otherwise legal, rich takes place in some or a range of activities: side protected areas or cross borders of illegally that are protected from gered Species (CITES); ber destined for export destruction and species al trade, there is almost ging and the extent of 90 per cent (by volume) and 30 per cent of global at its height somewhere it to be illegally logged res of illegally harvested odity displacement with er species – or to manufactu-ed) protection status of in part by a market demand for high-value August 2010 were esti- 22: 3). Illegally sourced ica et al. 2012: 3). The ly for governments and states the cost to timber-sliion a year. The trade thing between 7 and 16 es, fees or other forms of licence and use cheap and often vulnerable sources of labour (The Economist 2006: 74).

The Black Market in Ozone-depleting Substances

The ODS black market is a direct consequence of international agreement on targets to reduce and phase out the production and consumption of such substances as the most effective way to reverse the destructive depletion of the ozone layer. The trade initially focused on developed countries where demand for cheap ODS, in service industries in particular, went 'underground' as production and consumption became effectively illegal in those countries and the cost of retrofitting equipment rose. In the mid 1990s, according to the United Nations Environment Programme (UNEP), between 16000 and 30000 tonnes of illegal CFCs (chlorofluorocarbons) – equivalent to more than 10 per cent of global production – was traded annually, with a black market value estimated at something in the vicinity of US$300 million a year (Brack 2001: 5).

The market has now shifted to developing countries – the so-called Article 5 countries – which have benefited from a longer phase-out period. The Asia Pacific, which accounts for over 80 per cent of the world’s CFC production and consumption, is a major hub for smuggled ODS, particularly CFCs and halons. As with other illegal environmental commodities, the profits can be substantial. Cylinders of HCFC-22 imported illegally into the United States in 2007 were estimated to have been likely to fetch US$70 each had they entered the black market (Gatica 2011). Despite improved surveillance and tighter restrictions, the illegal trade in the latter half of the first decade of this century was still thought to constitute between 7000 and 14000 tonnes of ODS a year, about 10 to 20 per cent of the legitimate trade (Clark 2007: 1). Regulatory advances under international law, particularly the Montreal Protocol on Substances that Deplete the Ozone Layer, have created incentives for commodity displacement. As the implementation of phase-out agreements has made it harder to launder ODS through practices such as the use of fraudulent documentation, there is evidence of a growing black market in HCFCs (hydrochlorofluorocarbons), which are now also subject to accelerated phase-out targets.

Transboundary Dumping of Hazardous Waste

Hazardous waste, banned from international trade under the Basel Convention except in very specific circumstances, can take a number of forms: material waste of various kinds; componentry that contains or releases toxic chemicals; electronic waste; and decommissioned ships that contain hazardous products, such as asbestos or polychlorinated biphenyls (PCBs). Given the vast range of substances and products that might qualify as 'hazardous' in some form under international law, the extent of the illegal trade is unclear. However, the results of a joint enforcement operation carried out in 17 European seaports in 2005 give some idea of what the level might be. Of 140 waste shipments inspected, 68 – or some 48 per cent – turned out to be illegal (reported in UNEP 2006).

In contrast with the sectors explored above, the illegal trade in hazardous waste is explicitly supply-driven, mobilised by a desire on the part of waste producers to avoid
high disposal costs and by the profit motive on the part of those who are able to sell on the waste for illegal disposal. The waste is often dumped in the world’s poorest countries, with consequences that include the non-remediable pollution of water tables, river systems and local ecosystems and damage to animal, plant and human health, sometimes to the extent of extreme disability and even death.

DOING BUSINESS: THE POLITICAL ECONOMY OF ENTERPRISE CRIME AND BLACK MARKETS

TEC is reputed to be one of the fastest-growing areas of criminal activity, globally worth many billions of dollars to criminal syndicates around the world. Estimates have ranged from US$31 billion a year (Lauterback 2005) to US$40 billion or more (Hayman, cited in Lovell 2002). While some forms of TEC are opportunistic, occasional and informal, this area of illegal trade has become increasingly systematic, well financed and highly organised. These are not occasional movements of goods. Large quantities of environmental contraband are daily moved across borders, sometimes by individual smugglers and via rather ordinary forms of concealment (in cars, luggage, express post bags and, as with drugs, hidden on the person), but also in bulk consignments by ship, barge, truck and plane.

As with other forms of transnational crime, transnational environmental crime can be characterised as enterprise crime or, in what Phil Williams (2002: 164) calls the ‘neo-Clauswitzian’ approach, as ‘simply the continuation of business by other means’. The attractions are obvious. Compared with other forms of smuggling and illegal trade, the risks are low and the profits are high; ‘the very essence of rational profit maximizing entrepreneurs described in neo-classical economics’ (Geopolitics 2011: 10). Fewer resources are given to the suppression, interdiction and prosecution of such crimes. Law enforcement and customs officials are not only less aware of and less interested in environmental crime, but they are often poorly trained to look for or recognise illegal environmental goods.

Some of this enterprise is managed by commodity-specific smuggling syndicates: a kind of illicit market specialisation. But well-known organised crime groups have also become actively involved in the most lucrative areas of transnational environmental crime, a strategy of diversification that Mackenzie (2002) refers to as ‘multiple competences’ and David Luna calls ‘poly-crime’ (2008: 2). The trade in endangered species, for example, is reported to constitute part of what Williams (2001: 70) refers to as a ‘diverse portfolio of criminal activities’ in which Russian and Chinese crime groups, African-based smuggling rings, Asian crime groups and even South American drug traffickers are now involved (see, e.g., Europol 2011: 30–31; Miliken and Shaw 2012).

TEC also goes hand in hand with other kinds of illegal commodities, such as drugs and arms. This kind of parallel trafficking involves moving environmental contraband along the same smuggling routes used for other illegal commodities, combining illegal shipments, or using ostensibly legal shipments to conceal other forms of illegally sourced or traded goods and resources. Protected turtles, for example, have been found in the same shipments as marijuana (Cook et al. 2002). A seizure of CFCs in the Gambia also uncovered 2 tonnes of cocaine smuggled from South America (WCO 2010: 2). Evidence
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activity, globally worth an estimated US$150 billion (Hawkes 2004). The most recent manifestation of this kind of ‘venture capital’ model of TEC has brought together groups into illegal environmental activity in search of quick and substantial profits to fund political causes. The Sudan-based Janjaweed militia is involved in elephant poaching in Chad. Rebel groups in the Democratic Republic of Congo have become actively involved in the illegal ivory trade (Felbab-Brown 2011: 7) and the Kenyan Wildlife Service has identified armed groups from Somalia as the cause of an increase in elephant poaching within Kenya. Illegal logging and gun smuggling go hand-in-hand in places such as Liberia (Farah 2010). Recent evidence even hints at the possibility of involvement of groups with links to terrorist organisations (Levy and Scott-Clark 2007).

Transnational environmental crime also creates opportunity structures for legal companies to engage in ‘shadow enterprise’ and for front or shell companies to be used to hide illegal connections and practices. This arises because, in contrast to drugs, for example, illegal environmental trade sits alongside a legal one: in timber, in wildlife and even in chemicals and waste. Black markets, according to Naylor (2002: 3, 4), have become ‘institutionally embedded in the legal economy’ and, in some sectors at least, legal businesses use ‘ever shadier methods’. Commodities and profits are laundered with the assistance of delinquent professionals and ‘shadow facilitators’ (Farah 2010). Environmental goods and resources are moved in and out of the licit economy through the use of counterfeit or falsified documentation. Legitimate companies process fraudulent permits and lend their infrastructure to facilitate transportation in sectors such as the illegal timber trade.

Networked TEC Markets

The market functions of exchange and distribution – of illicit goods in this case – persist and flourish through networks. In simple terms, networks are ‘actors . . . linked to each other through stable formal or informal relationships of communication and exchange’ (Sangiovanni 2005: 7). They rely on horizontal, decentralised, fluid and sometimes transitory arrangements that are assumed to be more resilient and flexible than hierarchical and centralised institutions in responding to changing circumstances. Much of the work on networks in global governance has focused on the licit sphere of activity. But, as Phil Williams (2001: 4) observes, ‘organised crime is increasingly operating through fluid network structures rather than formal hierarchies’.

The concept of a ‘networked market’ describes the chains of custody through which illegally sourced or produced commodities are physically located and then moved to their destination. The nodes in the network are designed to manage illicit trade flows. The links between the nodes consist of relationships of (illegal) commercial exchange. Some TEC market networks are simple, even amateur or opportunistic attempts that involve a small number of people, uncomplicated smuggling routes and unsophisticated
forms of concealment. The market networks that underpin or manage the movement of large quantities of illegal environmental products, commodities or wastes are likely to involve multiple sources of goods, multiple participants in the chain of custody and the use of sophisticated methods to conceal either the goods or their true nature or origin. To make detection more difficult, illicit environmental goods are often moved along complex routes through more than one transit point where enforcement is lax and where goods can easily be repackaged, relabelled and given fraudulent documentation before being moved on.

A few examples will give a flavour of what we know about TEC market networks in practice. Intelligence on merbau smuggling syndicates in Southeast Asia shows that they involve timber brokers in Jakarta, companies and individuals in Malaysia that oversee the actual logging, companies in Singapore which charter cargo vessels and arrange false documentation, and brokers in Singapore and Hong Kong who connect sellers in places such as Papua with buyers in India and China (Newman and Lawson 2005: 9). Timber logged illegally in the Congo Basin, most often under the control of militia groups, is moved through local front companies to companies in and through Burundi, Rwanda and Uganda, exported globally to the European Union, the Middle East, China and other Asian countries, with support from financiers in the US (Nellemann et al. 2010: 6). The illegal trade in elephant tusks into Asia is reported to involve interlocking webs of shell companies, South-East Asian and African nationals, and a complex smuggling route that trades from Africa across multiple borders and through several Asian ports before reaching its final destination (Agence France Presse 2007; Banks et al. 2007). For example, ivory that ends up in China or Japan may have come from the Democratic Republic of Congo, Cameroon and Nigeria, through ports including Hong Kong, Macau and Taiwan. Jernelov (2005) also reports a complicated distribution line in CFCs from Spain via Singapore or Dubai, through India to Nepal or Bangladesh and then back again to the market in India, often relabelled or with fraudulent documentation.

Illicit networks of this kind also derive operational advantages from the inbuilt redundancy that comes from having few critical nodes — those without which the network would cease to function. As with licit markets, critical nodes exist at the point of production, harvest or capture; at the point of export and import; and at the point of retail or final use. But, with multiple actors filling or able to fill any one role, lines of communication and exchange can (easily) be repaired if any one node is removed through interrogation or prosecution. This ‘makes it difficult for law enforcers to pinpoint and unravel them’ (Sangiovanni 2005: 9).

The networks that sustain illicit transnational markets also require effective mechanisms of social control. As well as the kinds of efficient communication and transfer that sustain transnational market exchange in the licit economy, TEC networks are likely to place a high value on concealment. This demands that personal contact across a network is limited or controlled, especially if participants in illicit markets are likely to cooperate in ‘complex and [often] unpredictable ways’ (Williams and Godson 2002: 323). Doing business in the illicit economy influences the ways in which intermediaries in the network establish and maintain contacts, the ways in which bonds of trust are sustained in the absence of formal hierarchy and, as Edwards and Gill (2003: 62) point out, the ways in which ‘criminal expertise is transferred’. The more effective these webs of affiliation and
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Local communities who provide labour for illegal logging, timber processing or wildlife poaching are often integrated into criminal networks through patron–client relationships. These are likely to involve semi-feudal connections to local timber barons or local officials who control aspects of criminal activity, or through social coercion that takes advantage of economic vulnerability in situations where alternative livelihoods are not available. Local communities are sometimes also ‘bought off’ to minimise protests in areas where resource extraction is known to be illegal (see, for example, the case-studies of Cameroon in Van Oijen and Angerand 2007). Those engaged in illicit TEC market activity have also moved to take advantage of the ‘upperworld’ of corrupt officials and politicians, enabling them to evade control mechanisms and protect illegal chains of custody. Indeed, some commentators suggest that corruption should best be understood not as a pathology of the state, but rather as an instrument of risk management – a strategy for doing business – for criminal groups (Williams 2002: 174–5). Local officials, customs officers, police and the judiciary are bribed to overlook illegal shipments, to assist with false paper trails and forged documentation, to help evidence disappear during prosecutions, to delay or drop prosecutions, and even to return no convictions when cases are brought to trial. Syndicates running timber smuggling enterprises in Indonesia, for example, have ‘bought off’ local Indonesian customs officials and ‘harbour masters’ and used their influence to ‘have any attempted shipments by competitors stopped’ (Lawson 2004b: 13). Companies in Ukraine have ‘negotiated’ with customs officers to facilitate the importation of ‘uncontrolled’ ODS (Demkie 2001: 10) and companies involved in timber theft in Papua are reported to be ‘aided every step of the way by officials from the military, police and forestry departments, as long as the requisite bribe is paid’ (Newman and Lawson 2005: 7).

In their most extensive form, TEC networks integrate criminal actors fully into the economic and political institutions of the state, often delivering them significant power and even, as Serrano (2002: 18) suggests, consolidating ‘exclusive governing authority’. Rather than being just the recipients of bribes, government officials, protection and enforcement officers, and politicians can take key roles as the organisers, facilitators and beneficiaries of illicit market networks. The Environmental Investigation Agency reports cases of park wardens contracting poachers in Zambia’s South Luangwa National Park, and government vehicles being used in Tanzania to transport poached ivory, coordinated by a former game ranger who acts on behalf of senior members of the government (Banks et al. 2007: 6). Police and military officers are known to be heavily involved in organising and coordinating illegal logging in a number of countries in South-East Asia or providing security for logging operations (Noor and Syumanda 2006; Goncalves et al. 2012).

As with other forms of systematic criminal activity, these kinds of bribery and corruption undermine attempts to install good governance. They corrode the institutions of the state and compromise core values, such as the rule of law. In the most extreme cases of high-level corruption and personal patronage, the state itself no longer functions in the Weberian sense as a provider and guarantor of public goods, but more as a ‘protection racket’, or kleptocracy, that sustains private appropriation, resource ‘asset stripping’ and rent-seeking.
GLOBAL GOVERNANCE AND OF TEC

Disrupting criminal networks, even informal and opportunistic ones, is difficult. The most sophisticated smuggling networks in TEC are often better resourced than law enforcement and border control agencies. Penalties are often minimal. Intelligence on TEC activities is generally limited compared with what is known about other illicit markets, such as drugs or arms, and inter-agency arrangements within countries, let alone between them, for exchange of information, joint operations or mutual assistance are often uneven.

One of the challenges for governments in dealing with TEC is finding the right regulatory mix across prevention, detection, apprehension and prosecution. This involves the use of economic incentives, command-and-control strategies and law enforcement practices to contain relationships of exchange along the TEC chain of custody, restrict both supply-side and demand-side activity, interdict illegal trade, seize goods, pursue and punish perpetrators, and use surveillance of corruption, fraud and money-laundering to gather and act on financial intelligence. However, this regulatory mix – which captures policy instruments at a domestic level – is only one component of the ‘systems of [authoritative] rule-making, political coordination and problem-solving’ (Rosenau 2002: 8) that constitute and define the reach of global TEC governance.

At a more complex level, responses to TEC on the part of government agencies and other actors are informed by the variable forms of institutional geometry that Biermann et al. (2009) call ‘governance architectures’. As this section of the chapter demonstrates, at its core the governance architecture for TEC is a fragmented one. There is no single instrument or institution whose sole or primary purpose is to establish norms, policies and procedures for combating transnational environmental crime. Rather, the governance of TEC is articulated through the apparently discrete international and transnational dimensions of environmental policy on the one hand, and border control, crime prevention and enforcement on the other.

This fragmentation of governance across multiple scales and multiple actors is not, however, fundamentally conflictive. It is not intentional, except to the extent that different institutions and sites of authority have different mandates to deal with either the environmental or the criminal side of the policy challenge. Rather, drawing on the typology developed by Biermann and colleagues, it reflects a state of affairs that sits somewhere between cooperative and synergistic fragmentation. The former situation is marked by ‘different institutions and decision-making procedures that are loosely integrated’, an ambiguous relationship ‘between norms and principles of different institutions’ and core institution(s) that do not ‘comprise all countries that are important in the issue area’ (Biermann et al. 2009: 20). The latter – synergistic fragmentation – ‘provides for effective and detailed general principles that regulate . . . policies in distinct yet substantially integrated institutional arrangements’ (Biermann et al. 2009: 20).

The Multilateral Core

The multilateral environmental agreements that are most relevant to TEC are the 1973 Convention on International Trade in Endangered Species, the 1987 Montreal Protocol on Ozone Depleting Substances and the 1989 Basel Convention on the Transboundary
Movement of Hazardous Waste – are neither transnational crimes nor law enforcement agreements. Their purpose is to enhance conservation and environmental protection efforts through guidelines for the harvesting, production, use of and trade in particular substances or species. The Montreal Protocol commits parties to protecting the ozone layer through the control and, ultimately, the elimination of the production and consumption of chemicals that deplete it. The objective of CITES is to protect species that are endangered or threatened as a consequence of international trade. The Basel Convention was negotiated to manage the movement of hazardous wastes between countries and to ensure their environmentally safe disposal. Given that restrictions on trade, even for environmental purposes, remain controversial under General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) rules, the MEAs reflect a preference for trade regulation rather than prohibition, except where a ban on trade can be agreed in accordance with consent-based principles of international law. Each agreement establishes schedules of which species, chemicals and wastes may and may not be traded across state borders, the conditions under which trade may occur (including restricting trade with non-parties) and the various forms of licensing, control and consent procedures that are required to manage that trade.

Of the three conventions, only Basel refers specifically to illegal traffic, calling it ‘criminal’ (article 4(3)) and requiring parties to ‘introduce appropriate ... legislation to prevent and punish such traffic’ (article 9). Article VIII of CITES also requires parties to penalise trade that violates the Convention, but does not specifically describe such violations as criminal or illegal. The Montreal Protocol itself says nothing about illegal trade and it is generally accepted that the Parties were ill-prepared for the possibility that the Protocol could generate such outcomes.

Transnational crime agreements – such as the UN Convention against Transnational Organized Crime (TOC) and the UN Convention against Corruption – pay little attention to environmental crime as a serious crime. The preamble to the UN TOC Convention suggests (in effect) that it should constitute an effective tool against criminal activities such as illicit trafficking in endangered species of wild flora and fauna, but this is the only TEC-relevant reference in the treaty. Transnational environmental crimes generally fall outside the serious crimes framework defined in the Convention. National legislation rarely imposes the penalties of four or more years of imprisonment for activity such as timber trafficking or wildlife smuggling that would identify them as ‘serious crimes’ under the Convention.

Despite the lack of either a core institution or a clearly articulated normative structure in international law, TEC has nevertheless achieved a growing policy salience. Indeed, the issue area has become increasingly congested with activity. Some of this has happened under the auspices of the key TEC conventions. CITES has adopted a series of resolutions on illegal wildlife trade and has, in some cases, declared all trade in a particular species (sturgeon) or product (bear gall) to be effectively illegal. Parties are exhorted to strengthen controls on illegal trade, ‘not to encourage illegal trade’, and to enhance their efforts to combat illegal trafficking across the full enforcement spectrum. The Meeting of the Parties under the Montreal Protocol has similarly adopted a series of decisions on illegal trade – though the Parties conspicuously avoid using the terms ‘crime’ or ‘criminal’ – with calls for more effective tracking and reporting systems. The United Nations Environment Programme (UNEP), which hosts the Montreal Protocol
Secretariat, has worked extensively through its regional offices and its Division of Technology, Industry and Economics, to develop Regional Networks of Ozone Officers and the OzoneAction programme on capacity-building and training for implementing the Protocol and dealing with problems of illegal ODS trade. The Basel Convention secretariat has established procedures for reporting illegal traffic of hazardous wastes and the Conference of the Parties has adopted 'guidance elements' and a training manual for the detection, prevention and control of illegal trade.

Multilevel Governance

These distinct institutional processes are characteristic of multilevel governance, which is generally defined as decision-making within a common governance arrangement but dispersed across multiple jurisdictions or sites of authority, above, below and, in some cases, alongside states (see Jordan 2001; Zürn et al. 2010). The key MEAs described above now sit amidst governance and rule-making efforts that involve multiple actors, rely on a range of modalities including markets, regulation, monitoring, and intelligence-sharing, and have various degrees of formality and informality. TEC features on the policy agenda of non-environmental international agencies, such as the UN Office of Drugs and Crime (UNODC), the UN Commission on Crime Prevention and Criminal Justice (CCPCJ), the Regional Intelligence Liaison Offices (RICO) of the World Customs Organization (WCO), and Interpol. The UNODC, which hosts the secretariat for the UN TOC Convention, includes environmental resources in its Transnational Organized Crime Threat Assessment (TOCTA). In South-East Asia the Office has expanded the work of its Border Liaison Office network to include wildlife and timber trafficking. International cooperation on illicit international trafficking in forest products (including wildlife) is now a regular item on the agenda of the CCPCJ, a functional commission of the United Nations Economic and Social Council (ECOSOC) with the mandate to guide the UN on its crime prevention and criminal justice agenda. The World Customs Organization proclaims its front-line role in protecting borders against illegal environmental trade, Council sessions have adopted a number of recommendations on TEC, and the Customs Enforcement Network is being used to assist TEC enforcement efforts. Interpol’s Environmental Crime programme dates to 1992. It is supported by an Environmental Crime Committee and working groups on pollution crime, wildlife crime and (since 2012) fisheries crime. Although the programme remains ‘extra-budgetary’, Interpol has an increasingly clear mission to dismantle environmental crime networks, strengthen operational capacity and mobilise political support for environmental law enforcement. The 79th session of Interpol’s General Assembly in November 2010 recognised a ‘vital need for a global response to combating environmental crime’ (Interpol 2010: i) and, in March 2012, the organisation held the first ever International Chiefs of Environmental Compliance and Enforcement summit.

TEC governance also involves a plethora of activity outside this international and intergovernmental space. Bilateral and regional agreements bring governments together in arrangements such as Wildlife Enforcement Networks (ASEAN-WEN providing the model here), the European Union (EU)’s Voluntary Partnership Agreements, which address issues of forest governance and law enforcement, and the Lusaka Agreement Task Force, which implements cooperative enforcement commitments among governments in
Eastern and Southern Africa on illicit wildlife trade. Key non-governmental organisations (NGOs) – TRAFFIC, the Environmental Investigation Agency, International Fund for Animal Welfare and a range of others – have a long history of working independently to monitor environmental crime, conduct investigations, gather and share intelligence, and provide training and capacity-building. NGOs whose mandate is not specifically environmental, such as Global Witness and Transparency International, have also established an active profile on TEC issues. Corporate engagement is less well developed than in other spheres of activity that cross over into the illicit space – there is, for example, no equivalent of the Kimberley Process on conflict diamonds – but is reflected in commitments to sustainability and verification under private authority arrangements such as those managed by the Forest Stewardship Council, the Tropical Forest Trust and the World Wide Fund for Nature (WWF)’s Global Forest and Trade Network.

The state is not irrelevant in this governance mix. As Andreas (2004: 642) points out, the state itself ‘defines the boundaries of illegal market activities’. This occurs through processes of commission and omission. States – or governments in practice – are central to the form and function of relevant treaty law as negotiators and as responsible implementers of that law through domestic legislation and regulation. Yet the involvement of organised criminal groups brings the monopoly claims of the sovereign state into conflict with the shadow area of illegality that functions beyond or as a challenge to sovereign space and authority. Weak states, and those characterised by ‘socio-economic destitution’, are more likely to offer the kinds of ‘commercial opportunities’ that attract criminal groups (Wennmann 2004: 105). At the same time, efforts to control borders and reassert the role of the state in the face of both licit and illicit market liberalisation can have the unintended consequence of encouraging criminal groups to develop more innovative concealment and avoidance strategies. Finally, as Kahler (2009: 3) notes, ‘governments may also choose to delegate to networks . . . or use them as a new form of collaboration’. In the context of TEC, networks can function as enforcement strategies as well as instruments to enhance negotiation and cooperation.

Indeed, ‘networked threats’ of the kind associated with TEC, and explored in the second section of this chapter, are argued to ‘require a networked response’ (Slaughter 2004a: 2). This is because the hierarchical structures associated with (state) bureaucracies are assumed to be not much good at fighting networks as a consequence of what Sheptycki (1995: 618) some while ago called ‘linkage blindness’ – a lack of information networking and exchange that can result in inefficient and ineffective ‘overlap and duplication of functions and expertise’. As a United Nations Environment Programme report on combating the illegal trade in ozone-depleting substances put it, ‘networking counts’ (UNEP 2002).

**Networking Counts**

Global governance networks can be described as ‘non-hierarchical forms of policy-making . . . which involve public authorities as well as private actors’ (Kohler-Koch and Rittberger 2006: 34). They are assumed to be more efficient and effective in dealing with complex coordination and deliberation problems – and therefore in overcoming problems of fragmentation – for three reasons that address the challenges of governance
failure identified by Dixon and Dogan (2002: 173): ‘knowledge problems (lack of governance knowledge), capability problems (lack of governance instruments) [and] implementation problems (lack of governance effectiveness)’. First, networks that involve public and private actors are argued to facilitate and improve the quality and depth of cooperation between countries, enhance compliance with international treaties and facilitate ‘more effective and timely adoption of national legislation’ (Töpfer 2002: 3). They not only ‘expand regulatory reach’, but also ‘build trust and establish relationships among their participants . . . [and] establish the conditions essential for long-term cooperation’ (Slaughter 2004b: 162). Raustiala further argues that the ‘existence of a network strengthens incentives to seek convergence [of policies, regulations and operational practice] because convergence allows for deeper and broader cooperation’ (cited in Slaughter and Zaring 2006: 215).

Second, transnational networks are expected to enhance problem-solving capacities and reduce transaction costs, improve data collection, facilitate the flow of information, and support coordination among multiple agencies. Powell argues that network forms of organisation should be ‘more effective than either markets or hierarchies in situations requiring know-how [and] demanding speed’ (cited in Slaughter and Zaring 2006: 218). Third, networks can help to enhance institutional ‘learning’ through what Sheptycki (1995: 617) called the ‘transnational trade in criminological knowledge’. UNEP (2002: 4, 10) refers to this as ‘collective learning by sharing while doing’ and ‘peer-to-peer problem solving’. Networks, in theory at least, enable actors and agencies to share policy tools more effectively and quickly than hierarchical arrangements and institutions, to exchange regular information about their own practices and develop databases of best practice (Slaughter 2004b: 162) and to ‘brainstorm innovative . . . solutions’ (UNEP 2002: 5).

Specific partnerships lie at the core of some components of policy and governance convergence. The MEAs, the institutions that host them and other key intergovernmental organisations have developed a series of overlapping bilateral Memoranda of Understanding (MoUs) and other agreements to strengthen the depth and quality of cooperation on various TEC sectors. The World Customs Organization has concluded MoUs with (among others) UNEP (2003), the CITES Secretariat (1997), the Basel Convention (1997) and the Lusaka Action Task Force. The LATF has established MoUs with the CITES Secretariat (2000), the Interpol Secretariat (2006) and the Commission for Central African Forests (2010). Interpol has negotiated MoUs with the CITES Secretariat (1998) and the Basel Convention (1999), as well as those mentioned above. These partnership arrangements have also become cross-sectoral. In 2002 the secretariats of CITES, the Basel Convention and the Montreal Protocol (bringing together wildlife, waste and ODS) signed an MoU to strengthen cooperation among them. Many of these MoUs focus on mutual consultation, information exchange (including secure information and joint databases where appropriate), reciprocal representation and technical cooperation, ranging from joint training materials through to enforcement action including strategies such as controlled deliveries and joint operations. Their objective, whether explicit or not, is to enhance problem-solving capacities and institutional learning, as well as to strengthen cooperation.

This patchwork of bilateral and trilateral partnerships (of which only a small selection is identified above) has become increasingly networked as governments, international
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problems (lack of governments) [and] implement networks that involve the quality and depth of national treaties and action’ (Töpfer 2002: 3),

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in only a small selection of elements, international organisations, NGOs and the corporate sector have begun to explore more innovative ways of working together to govern and combat transnational environmental crime. The Green Customs Initiative, operational since 2003, is a cooperative partnership of 11 MEA secretariats and international organisations to detect and prevent the illegal trade in environmentally sensitive commodities at the same time as facilitating the legal trade. The iPIC network, initially established to bring together governments in South Asia, South-East Asia and the Pacific to strengthen cooperation on the application of prior informed consent strategies for ODS, has expanded to include the EU, as well as countries in Europe, Central Asia, and Latin America and the Caribbean. The International Consortium on Combating Wildlife Crime (ICCCWC – pronounced ‘eye-quick’) brings together CITES, Interpol, the UNODC, UNEP and the World Bank to provide coordinated support to national wildlife law enforcement agencies and to relevant sub-regional and regional networks.

Kahler (n.d.: 4) reminds us that the emergence of networks in global governance ‘does not mean that governments have been evicted from their traditional roles’. But while some TEC governance arrangements remain more firmly under the auspices of government networks than others – in effect, constituting transgovernmental networks of national officials and intergovernmental secretariats – others function as variations of global public policy networks that bring together government, non-state and private sector actors. TEC networks involving NGOs are more likely to function as coordination and knowledge networks than implementation networks. This is perhaps not surprising. TEC governance spans the boundary between environmental protection, in which transnational non-state agency is increasingly accepted, and the making and implementation of rules on crime prevention, enforcement and border protection over which sovereign states claim and seek to retain individual and collective authority.

It is notable too that NGOs and scientific bodies have become increasingly important components of the networked and multilevel architecture that characterises TEC governance, often as key partners in formal arrangements and active partners in informal arrangements. The wildlife NGO TRAFFIC (itself a network) is, for example, a formal partner with CITES under an MoU adopted in 1999 to strengthen capacity building, communication and liaison. This relationship now includes TRAFFIC acting as a mandated collection point for data from the Parties (on the killing of elephants, for example) and a formal requirement for TRAFFIC to report its analysis to each CITES Conference of the Parties. The Coalition against Wildlife Trafficking (CAWT), a US government initiative which describes itself as ‘voluntary public-private coalition of like-minded governments and organizations sharing a common purpose’, includes a range of NGOs in partnerships with like-minded governments. NGOs are partners with governments and international organisations in so-called ‘Track II’ arrangements, such as the Asia Regional Partners’ Forum on Combating Environmental Crime (ARPEC) and the International Network on Environmental Compliance and Enforcement (INECE). The dependence on public and private spheres of action, and the frequent blurring of the two, is reflected also in the extent of undercover and intelligence-gathering operations that track and report on criminal activity undertaken as much by key NGOs, such as TRAFFIC and the Environmental Investigation Agency, as by governments or international enforcement and policing agencies, such as Interpol and the World Customs Organization.
CONCLUSION

As the Environmental Investigation Agency (2008: 2) puts it, environmental crime is 'serious, transnational and organized'. Crimes associated with illegal extraction, harvest and waste are serious because of their environmental consequences; because of the ways that they undermine the rule of law and good governance at local, national and global levels; and because of their links with violence, corruption and a range of crossover crimes, such as money-laundering. They have become increasingly transnationalised through the involvement of criminal actors in more than one country (and often many countries) linked together through networks of illegal trade and illicit finance to move goods across borders. Indeed, this area of criminal activity is sufficiently systematic and organised that it now merits consideration alongside other forms of transnational organised crime. The criminal networks that sustain larger-scale TEC are professional and well organised with complex transnational relationships of communication and exchange that span the illicit and licit economies and link local harvest, extraction and waste production to a global marketplace.

In simple terms, transnational environmental crime could be understood as a problem of the kind of regulatory failure that occurs when there is insufficient regulation, or when regulatory systems are based on outdated or insufficient knowledge, or when domestic agencies 'inadequately fulfill their oversight, supervisory and enforcement functions' (Kaufmann and Penciakova 2011). The Director of the UN Interregional Crime and Justice Research Institute (UNICRI) has argued that the fight against TEC is complicated (and compromised), not just by 'scarcity awareness and knowledge of the problem [and] insufficient regulation', but also by 'scarcity international cooperation' (Calvani 2009: 14). It is perhaps more accurate to suggest that global governance responses to TEC have been characterised not so much by 'scarcity' cooperation as by 'fragmented' cooperation. For much of its history the global architecture of TEC governance has been the product of independent policy spheres rather than of specific design, resulting in a 'patchwork of ... institutions that are different in their character ... their constituencies ... [and] their spatial scope' (Biermann et al. 2009: 16).

Yet, as this chapter has demonstrated, TEC governance architectures have come to display an increasing degree of convergence in purpose and, more particularly, in practical strategies for political coordination and problem-solving. This convergence can be explained by two related factors. First, the epistemic community – those with authoritative claims to policy-relevant knowledge and expertise who are actively engaged in action on TEC – is actually quite small. In the TEC space, this includes government officials, law enforcement officers, criminal investigation and border control agencies, environmental NGOs, scientific and research bodies, and the private sector. Second, the kinds of partnerships and networks that have come to characterise TEC governance help to facilitate knowledge transfer and strengthen policy coherence. These networks function at and across multiple levels and sites of authority, providing opportunities to bring together international organisations, non-governmental organisations and government (state) agencies in the fight against transnational environmental crime. Yet the chapter has also hinted at factors that can serve to constrain those opportunities for better and more effective global (TEC) governance: limited resources, weak coordination and poor strategies for managing intelligence, on the one hand; and the continuing problems of
Governing the international political economy of transnational environmental crime weak states, government corruption and the integration of illicit with licit economies, on the other.

NOTES

1. One of the most extensive forms of waste trade is electronic waste or e-waste. Trade in e-waste is not necessarily illegal: trade in used computers and other high-tech electronics for appropriate and safe reuse or recycling into the second-hand market is permitted under international law although domestic regulatory structures are often fairly permissive.

2. Two further conventions – the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for certain Hazardous Chemicals and Pesticides in International Trade and the 2001 Stockholm Convention on Persistent Organic Pollutants – have been brought into the TEC governance architecture because of their own trade restrictions and through the development of a single integrated secretariat.

3. The Basel Parties have agreed to a ban on the trade in hazardous waste for final disposal between Organization for Economic Co-operation and Development (OECD) and non-OECD countries and a ban on the export of wastes intended for recovery or recycling, although at the time of writing (October 2013) this was not yet in force.

4. Conf. 6.4 (REV), Controls on illegal trade, adopted at the Sixth Meeting of the Conference of the Parties, Ottawa (Canada), 12–24 July 1987 and amended at the Ninth Meeting of the Conference of the Parties, Fort Lauderdale (United States of America), 7–18 November 1994.

5. The challenges posed by environmental crimes constituted the key thematic focus for the Commission’s 22nd session in April 2013. The Commission adopted a resolution encouraging member-states to make the illicit trafficking in wild fauna and flora a serious crime under the terms of the UN Convention Against Transnational Organized Crime.

6. The Customs Enforcement Network is an internet-based system that provides secure access to seizure data, alerts, intelligence and secure communications.

7. See http://www.cawnational.org/about/.

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