

GOVERNMENTAL DISCOURSES ON TRANSNATIONAL
ENVIRONMENTAL CRIME

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TRANSNATIONAL ENVIRONMENTAL CRIME PROJECT

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Transnational Environmental Crime Project

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The project investigates emerging trends in transnational environmental crime and examines the conditions for successful regulatory and enforcement responses. It focuses on three themes:

- advancing our understanding of the ways in which environmental commodities that are either sourced illegally or destined for illegal markets are traded and the ways in which profits are then laundered into the legal economy;
- applying conceptual tools to advance our understanding of the organisation of TEC and the asset structures that sustain illicit chains of custody and profit laundering; and
- mapping and analysing existing transnational and intergovernmental practices in the areas of policy-making, compliance and enforcement.

The Project is led by three Chief Investigators:

- Professor Lorraine Elliott, Department of International Relations, The Australian National University
- Professor Greg Rose, Faculty of Law, University of Wollongong
- Julie Ayling, Fellow, Regulatory Institutions Network, The Australian National University

The Project team also includes a Research Assistant and a PhD student funded by an Australian Postgraduate Award (Industry) scholarship and an ANU HDR Merit Scholarship. Five Partner Organisation Visiting Fellows will join the project team, based at the ANU, for a period of three months, each to bring specific policy and operational expertise to the research project.

Working Papers

The TEC Project's Working Paper series provides access to the Project's current research and findings. Circulation of the manuscripts as Working Papers does not preclude their subsequent publication as journal articles or book chapters.

Unless otherwise stated, publications of the TEC Project and/or the Department of International Relations are presented without endorsement as contributions to the public record and debate. Authors are responsible for their own analysis and conclusions.

Abstract

This paper summarises, analyses, and assesses four working papers published by the Transnational Environmental Crime (TEC) Project and written by two employees of the Australian Government's Department of the Environment (DoE) who served as Visiting Fellows to the TEC Project. This working paper also forms part of the TEC Project. It synthesises the data and concludes the overall contribution made by DoE, emphasising future areas of consideration. Part of this involves enunciating research findings in such a way that they can be better utilised by DoE to subsequently develop policy in the area of TEC regulation, which is also one of the aims of the TEC Project generally: that the course of academic research provide assistance in the development of government policy on the matter of TEC with subsequent operational benefits.

About the author

Matthew Marshall is a Senior Regulatory Advisor, Regulatory Capability and Assurance Section, in the TEC Project's partner organisation, the Department of the Environment. Dr Marshall's experience in this role has included policy development and capacity-building activities across operational, intelligence, policy, and liaison functions.

ABBREVIATIONS

AELERT	Australasian Environmental Law Enforcement and Regulators neTwork
APEC	Asia-Pacific Economic Cooperation
ARC	Australian Research Council
ARREST	Asia's Regional Response to Endangered Species Trafficking
ASEAN	Association of Southeast Asian Nations
ASEAN-WEN	Association of Southeast Asian Nations Wildlife Enforcement Network
CITES	Convention on International Trade in Endangered Species
DoE	Department of the Environment
DSEWPaC	Department of Sustainability, Environment, Water, Population and Communities
FICMA	Fiji Island CITES Management Authority
ICCWC	International Consortium on Combating Wildlife Crime
Interpol	International Police Organisation
KNI	Key National Informant
PNG	Papua New Guinea
SWOT	strengths, weaknesses, opportunities, and threat
TEC	transnational environmental crime
UNCAC	United Nations Convention against Corruption
UNCCPCJ	United Nations Commission on Crime Prevention and Criminal Justice
UNCTOC	United Nations Convention against Transnational Organized Crime
VF	Visiting Fellow

Governmental discourses on transnational environmental crime

MATTHEW MARSHALL*

INTRODUCTION

This study summaries, analyses, and assesses four working papers published by the Transnational Environmental Crime (TEC) Project by two employees of the Australian Government's Department of the Environment (DoE)¹ who served as Visiting Fellows (VFs) to the TEC Project. The working papers were written and published in the three-year period that marked the collaboration between the Department of International Relations, College of Asia and the Pacific, Australian National University (ANU), the Centre for Transnational Crime Prevention, University of Wollongong, and the DoE, operating under the auspices of an Australian Research Council (ARC) Linkage Grant (for details of the working papers, see Horne 2013a, 2013b; Pink 2013a, 2013b).

This working paper also forms part of the TEC Project. It synthesises the data and concludes the overall contribution made by DoE, emphasising future areas of consideration.² Part of this involves enunciating research findings in such a way that they can be better utilised by DoE to develop further policy in the area of TEC regulation (with the possibility of informing environmental crime regulation more generally). This is also one of the aims of the TEC Project: that the course of academic research provide assistance in the development of government policy on the matter of TEC with subsequent operational benefits:

By filling the gaps in our knowledge and understanding of this important environmental and law enforcement challenge this research will make a significant contribution to advancing the ways in which environmental regulatory agencies pursue their operations against organized transnational environmental crime, deliver regulatory outcomes and engage with enforcement networks. A better, evidenced [*sic*] based understanding of TEC will help to ensure that environmental regulatory agencies can affectively and strategically target limited resources in the face of tight budgets (Elliott 2011: 10).

METHODOLOGY

This working paper comprises a textual analysis and, more generally, an analysis of the discourse presented by the papers taken together as representative of DoE knowledge on the issues of TEC and its regulation. Each paper is considered individually and then collectively to establish demonstrated strengths and weaknesses in the regulation of TEC. Such an analysis indicates areas requiring further study and action.

The order in which the working papers are individually outlined and reviewed may seem unusual. The working papers could have been considered in a number of ways. Notably, Grant Pink's papers are assessed before Dylan Horne's, in spite of their numerical order. This is partly due to the fact that Mr Pink was the TEC Project's first VF and Dr Horne was the second. Mr Pink was the first to undertake his research, which informed Dr Horne's. The reverse is partially true since the papers were developed concurrently at points, but Dr Horne's papers demonstrate a greater reliance on Mr Pink's than the other way around.

* Any views or opinions expressed in this paper are those of the author and not those of the Australian Government or the Department of the Environment.

¹ Over the life of the TEC Project, DoE had a number of name changes, including the Department of Environment, Water, Heritage and the Arts (DEWHA), and the Department of Sustainability, Environment, Water, Population and Communities (DSEWPac). It is now known as the Department of the Environment, and will be referred to as such throughout the paper.

² One of these areas of consideration is discussed fully in the companion piece to this paper which reviews the TEC Project's running and analyses the discourses contained in those working papers written by the DoE's VFs (see Marshall and Pink 2014).

Reviewing the papers in their order of production, rather than submission, provides a thematic benefit. Working Papers 4/2013 and 5/2013 (Pink 2013a, 2013b) consider general organisational structures that impact on the regulation of TEC. Working Papers 1/2013 and 2/2013 (Horne 2013a, 2013b) look at the specific organisations at global, regional, and national levels (which demonstrate the characteristics outlined in Pink 2013a, 2013b) as they combine into networks as part of transnational wildlife crime policy. Reviewing the papers in order of production also allows a transition from the general to the particular, and from theory to policy.

WORKING PAPER 4/2013: PINK (2013A)

On the one hand, Pink 2013a provides a typology of agencies and activities tasked with combating TEC. On the other, the paper constitutes a review of the literature that addresses the organisation, culture and challenges of agencies engaged in environmental law enforcement including against TEC activity, and the utility of currently available mechanisms for preventing and deterring crime as well as responding to its occurrence.

Agency typology

Pink (2013a) identifies three kinds of agency engaged in regulating TEC: environmental regulatory agencies, traditional police agencies, and customs and port authorities. Across these agencies differing cultural norms are manifest. Environmental regulatory agencies are public service cultures tasked with regulatory responsibilities in addition to the programmatic and policy roles with which they are more familiar. Such agencies favour negotiation, conciliation, and provide service-like support to a perceived client base. If they possess a regulatory strength it is identifiably preventative:

[C]ultural challenges relate to issues associated with the tension between the expectation and the reality of role and function of public service agencies/departments. This tension occurs principally for those agencies/departments that have been established to assist the general public and that function with a customer service approach (Pink 2013a: 3).

Traditional police agencies are responsive, interventionist, non-discretionary and direct. Their cultural strength relates to activities with which police agencies have been long associated, namely employing coercive powers to detain persons engaged in a breach of the law:

[E]nvironmental crime and transnational environmental crime *per se* are not priority crime types or areas for either Interpol or the Australian Federal Police. Rather it is the type of offenders (including organised crime elements) and the *modus operandi* of the offending, coupled with methods used to traffic goods and generate unexplained wealth that results in police agencies, intelligence agencies, and immigration agencies around the world becoming increasingly involved in law enforcement responses to TEC (Pink 2013a: 9, italics in original).

According to Pink (2013a), customs and port authority cultures fall somewhere between the two other types of agency, having conciliatory, administrative, and preventative aspects as well as responsive, deterministic approaches that overtly employ coercive powers. Customs and port authorities have a strength defined by their unique jurisdiction at the physical boundary of a political state's authority.

Agency cultures

The cultural preferences of each agency incline them towards particular approaches and responses to TEC. These varying preferences create conflict when the agencies have to coordinate efforts on joint operations and make other attempts at eliding capabilities. As Pink (2013a: 4) notes, 'differences can be amplified given the nature of TEC and organisational variations between the three core agencies'.

There are indications that conflicts between types of agencies are exacerbated by the fact that environmental regulatory agencies could reasonably be expected to take the lead when dealing with crime types on which they supposedly have some expertise, but that such a role poorly suits agencies with a culture that defines itself by a policy of accommodation, if not deference. Thus Bricknell (2010: 14) suggests that 'agencies who only recently adopted the mantle of regulator are still negotiating the regulatory culture'.

Beyond this, pre-conceived preferences encourage a lack of adaptability to the particular circumstances of TEC. They fail to draw in a targeted and appropriate manner from the spectrum of options available in legislative instruments and through the consensual and inferred authority of the state:

Environmental law is not simply a collection of statutes on environmental subjects. Instead, it is a complex system of civil and criminal statutes, regulations, and guidelines, which a wide variety of government agencies promulgate and enforce (Situ and Emmons 2000: 140).

Regulatory options

Pink (2013a) outlines three broad types of options available to agencies responding to instances of TEC: administrative, criminal, and civil. Administrative measures arise from an agency's legislated powers relating to systems entry and control, as well as from the government's role as the representative of the interests of the body politic. Such measures cover all efforts to encourage compliance with the law, have some scope for encouraging non-legislated but socially responsible behaviour, and can extend to the imposition of fines, the introduction of increased operational control mechanisms under a licensing or permitting regime, and the entry into binding agreements between government and likely environmental offenders that have goals which are restorative, remedial, or preventative. As this list should indicate, administrative measures, while not as coercive as litigious responses, are much more variable.

Of the remaining types of responses to environmental criminality, criminal measures remain the most familiar. They are the most traditional, entailing a trial to determine the mental and physical elements of an offence beyond all reasonable doubt, and, should a guilty verdict be made, the imposition of fines in addition to or in place of incarceration. Limited in terms of variety, the outcome of a criminal response is punitive rather than restorative and may therefore not necessarily suit cases where environmental harm has occurred but can potentially be corrected.

Civil penalty responses require court action, but have more in common with tort, the law of negligence, and equity than with traditional criminal law. There are civil penalty imposts that replicate criminal law pecuniary penalties and the standard of proof for establishing a civil penalty provision is on the common law's balance of probabilities. However, what truly demonstrates civil penalty provisions' equitable and tortious lineage is their scope for pursuing prevention and redress. Civil penalty provisions can provide injunctive and restorative relief in the event of pending or actual environmental harm or wrongdoing.

The literature reviewed in Pink (2013a) indicates that none of these options is superior to the other in absolute terms. Each response has its place along the regulatory cycle (Farmer 2007: 11) that runs from regulatory regime design through system entry, licensing and approvals, monitoring and audit, compliance activities, enforcement responses, to litigation, as well as being in accord with an escalating and adaptive regulatory regime. As Ayres and Braithwaite (1992: 5) observe, 'for the responsive regulator, there are no optimal or best regulatory solutions, just solutions that respond better than others to the plural configurations of support and opposition that exist at any particular moment in history'.

In this conception, especially in relation to environmental and transnational crime types where adaptability is needed to meet the wide variety of agents engaged in a wide variety of criminality, regulatory responses become part of a suite of tools (Freiberg 2010: 82) for use by those engaged in the task of reducing environmental harms. These tools, joined to varying degrees of effectiveness by and potentially activated through the process of risk management, form an agency's regulatory capability. Thus, 'proper analysis of risk directs regulators' efforts at areas where it is most needed, and should enable them to reduce the administrative burden of regulation, while maintaining or even improving regulatory outcomes' (Hampton 2005: 1).

Improving capability

Regulatory capability can be enhanced when it operates in conjunction with other agencies seeking similar goals. There is in fact a line of thought that environmental regulatory capability only exists in multi-agency form: 'the single most important requirement for effective environmental law enforcement is cooperation between regulatory agencies and traditional law enforcement officials' (Situ and Emmons 2000: 140).

Pink (2013a) implicitly supports this position and in doing so returns to his opening problematic: how to combine effectively the efforts of agencies that have very different, potentially incompatible organisational cultures, but that remain jointly responsible for combating TEC? The conflicting cultures that exist at the level of organisational typology are no doubt exacerbated and enhanced when there are

broader cultural differences, as there surely must be in the transnational, therefore multilateral international arena. Such differences would include language (not just dialect or jargon), history, social structures, and processes of national identification, all of which can collectively be considered the factors that build instances of vernacular knowledge:

Vernacular knowledge ... is the co-generative product of particular geographical as well as social features and due to biophysical and cultural heterogeneity each body of vernacular knowledge will be somewhat unique. Vernacular knowledge therefore is of great potential significance for policy and law reform (Bartel 2013: 3).

The challenge becomes finding a way to avoid building cultures of resistance through acknowledging the place and status of vernacular knowledge within regulatory instruments, both in the sense that localities have their own norms requiring recognition and that imposed laws have geographic origins with manifestations that may not transplant well. No law is place neutral:

Place gives rise to vernacular norms as well as vernacular knowledge: location informs the norms of the people who live in that location, and these norms will in turn influence the management of that place. Norms that become laws will also exhibit this lineage, and will be sociospatial artefacts. They may be transferable or their success may be location-dependent. Those uniquely tied to place may conflict with laws imposed from elsewhere: that may be geographically inappropriate since they are disconnected from the place of intended operation (Bartel 2013: 3).

In acknowledging the role of space and locale, there remains a need for points of commonality in treating transnational crime types due to the obvious fact that, by definition, they ignore geographical boundaries. Based on the above, legislative sameness seems counter-productive. However, processes and approaches can be accorded as long as such a forum exists to do so.

Of all the possible answers to the problem, Pink (2013a) proposes one of the more effective – the institution of and active engagement in regulatory and law enforcement networks that can draw members from varying types of agencies and different jurisdictions. Networks permit a broad dissemination of information, act as a forum for capacity sharing, and realign hierarchies in such a way that manifestations of established cultural resistance have a chance to be overcome. He closes by stating that the problem remains. The field of TEC regulation is complex, changing, and subject to a number of pressures. All this would seem to indicate that to be effective in any way, networks and agencies should continue to develop and reinforce adaptable, open, practical organisational regulatory cultural practices.

WORKING PAPER 5/2013: PINK (2013B)

Pink (2013b) contains a qualitative survey of 11 regulatory practitioners engaged in transnational and other environmental law enforcement activities. Survey questions related to various aspects of the TEC law enforcement response experience. Responses were then subjected to a SWOT (strengths, weaknesses, opportunities, and threats) analysis (Prunckun 2010: 136–7) to determine future directions for improving law enforcement capability in relation to TEC. While 11 is a very small sample group, the survey was not intended to be quantitative in nature. Instead, the regulatory practitioners surveyed evince a high level of knowledge and experience (as established in the responses to the first question in the survey), providing high level qualitative responses. As Pink (2013b: 6) notes, '[t]he extent of previous experience in mainstream law enforcement agencies relating to the active application of LERs [law enforcement responses] to traditional crime ranged from zero to 21-years experience (averaging in excess of 12 years)'. Collectively, the respondents present as subject-matter experts comprehensively engaged in improving law enforcement responses to TEC.

Strengths

In the subsequent analysis of the responses to the questionnaire, the identified strength (the first of the four criteria for assessment) was found to be the body of staff possessing specialised skills in the field of environmental law enforcement. One of Pink's Key National Informants (KNIs) noted that 'the competence of staff performing enforcement activities needed constant attention given the risks associated with this type of work' (Pink 2013b: 7). The contribution of such staff to the regulation of TEC is built and reinforced by their participation in formal and informal networks which provide multi-jurisdictional forums for the dissemination and transfer of knowledge, particularly on operational priorities and policy direction.

Weaknesses

In terms of the second criteria, Pink (2013b) identifies the key weakness threatening effective transnational environmental law enforcement efforts as cultural. Environmental agencies appear to have difficulties accepting a regulatory role, which is more adversarial and less service-oriented than programmatic or policy work, the other and more familiar tasks performed by public service cultures:

The KNIs suggested improvements in agency culture could be made by recognising the importance of having staff with compliance and enforcement experience or at least having compliance and enforcement staff involved in the policy development process (Pink 2013b: 11).

Agency-wide difficulties in relation to regulatory activity can be compounded at the individual and line levels in instances where staff with generalist skills (the majority as a matter of course) intersect with the specialised regulatory field, either being tasked with regulatory responsibilities, or performing functions that act as preconditions to regulatory activity, as in the case of drafting legislative provisions, establishing approval regimes, apportioning budgetary resources, and setting departmental priorities and outcomes. Failures on the part of an agency's senior management to establish an appropriate regulatory culture can lead to TEC having a low or non-existent profile in terms of requiring governmental action:

The KNIs felt strongly that it was important for enforcement activities to be given a higher profile across their respective agencies. There was clearly a desire for enforcement work in the environmental regulatory agencies to both become and be considered as core business (Pink 2013b: 12).

The result is that TEC is not prioritised and remains inadequately funded regardless of the social, economic, and environmental risks it poses:

Throughout the world, authorities responsible for enforcing environmental regulations and promoting compliance with environmental requirements are operating in the context of financial constraints. Such constraints can be a consequence of the general pressures on the state budgets or the changes in government policies, which may result in shifting the resources to address short-term priority problems away from environmental protection. Very often, environmental inspectorates are required to maintain, or even achieve higher performance with fewer resources (OECD 2005: 3).

Opportunities

In response to the above issues and through an assessment against the third SWOT criteria, Pink (2013b) suggests that opportunities exist for improved transnational environmental regulatory activity in the areas of networking, culture, and resource sharing. Commitment to these three matters seems likely to improve TEC responses.

Threats

According to Pink's analysis against the fourth criteria, efforts to achieve improvements remain subject to risks arising from shifts in political priorities, changes to agency priorities, and deficiencies in legislative design and development. Political shifts can be marginally accommodated by the provision of informed and accurate advice to wielders of executive power, but whether anything more can be done in the political arena may have to remain an open question in the context of this discussion. In terms of agency policies, these too remain subject to political contingency. However, the diversity of power interests engaged at the agency policy level perhaps makes this a more contested space, thereby creating opportunities for establishing effective, or at least improved, TEC regulatory activity. Such diverse power interests include not only ministers and other political office holders in oversight roles, such as committee and inquest memberships. Such interests can also be activated in the course of reviews, audits, standards and practices, as well as those manifest in the career, professional and personal agendas and aspirations of managers at various levels, from the operational line area to the senior executive. McMahon (2006: 29) argues that 'their mission-commitment to particular policies is such that bureaucrats will generate policy proposals for their superiors which are the kind of programs they, as career officials, want their agency to pursue'. Or to put it another way:

Even if we do not accept the cynical view that after some (unspecified) point in their existence agencies become self-serving, we must understand that over time goals pursued by an agency generally come to mean what the incumbents of the roles want them to mean (Peters 2001: 163).

The diversity of interests at this level of organisational power operations, while creating openings for action, does limit the extent to which agency-wide reform can potentially be achieved. In fact, there are

arguments that the current circumstances in which agency policy development occurs is so balkanised (Harris and Milkis 1996: 38) that overall improvements are an impossibility: '[P]ockets of subcultural consensus', McMahon (2006: 184) argues, 'cannot generate an agency-wide commitment to mission, nor will such a consensus lead to the development of an organizational culture'.

Nevertheless, within a limited framework and on a specific aspect of agency activity, for example transnational wildlife crime responses or even environmental regulatory activity more generally, there perhaps remains some hope of progress even if the actual answer is to resolve the more general problem which is that of organisational leaders permitting such a diversity of interests within their own agencies. McMahon (2006: 160) uses the example of the United Kingdom's Environmental Agency:

One of the most obvious, and the most damaging, factors which affected the motivations of almost all EA [Environmental Agency] staff was the failure of senior management to generate consensus ... As a result of this dissension at the top of the agency, it was very difficult to reach a consensus on issues of organizational structure and management style.

As for legislative design and development, the respondents to the survey seem already to have provided the strongest risk mitigation measure likely to prove available, namely the involvement of staff with regulatory skills and knowledge in the legislative and regulatory system design process.

Issues for consideration

Pink (2013b) next presents a discussion regarding issues suggested by respondents or by the analysis of the respondents' answers, that may prove worthy of further consideration. Normative issues remain. Examples include the definitional conflicts and gaps across and within the three kinds of agency outlined in Pink (2013a). Pink (2013b) seems to draw his data from respondents occupying positions in environmental regulatory agencies (those agencies tasked with regulatory responses to breaches of a state's environmental legislation and that contain public service cultural elements to a potentially high degree):

[T]he study emphasises that ERAs [environmental regulatory agencies] are a nodal point for the relationships associated with LERs [law enforcement responses] to TEC. This is primarily due to the fact that ERAs have the lead role in administering the relevant multilateral environmental agreements. They oversee the scientific contribution associated with such crimes and hold responsibility for environmental legislation (Pink 2013b: 18).

However, these agencies still operate within a context of broader regulatory activity conducted by police agencies, as well as customs and port authorities. The differences in normative values across the three types of agencies leads to differing emphases as regards preferred regulatory responses to incidents of TEC:

Linked to their organisational mandate and focus, and influenced by historical, cultural and organisational capability, the three core agencies have developed reliance, expertise and in some instances a predilection for one or more of the three broad LERs [law enforcement responses]. The result is that the use of administrative, civil, and criminal remedies/responses varies greatly between the three core agencies (Pink 2013b: 20).

The context within which environmental regulatory agencies operate, in relation to police agencies as well as customs and port authorities, impacts on the opportunities identified in the analysis of survey responses. A key avenue to better efficiencies and outcomes in responding to TEC is increased involvement in networked activity, at operational, skill-sharing, and prioritisation and policy-setting levels. Normative differences and disjointed definitional bases impact on the effective communication that can be achieved in the course of network forums, events, and operations. Pink (2013b) suggests these differences can be ameliorated by agencies improving internal regulatory culture. Such a culture would manifest as including continuing and increased support for staff with specialised regulatory skill sets, the adoption or the ongoing use of the full spectrum of regulatory responses as based on systems of risk prioritisation, and (in an instance where the process is also the outcome) greater levels of involvement in network activities:

The research has identified that TEC law enforcement responses are advanced through international coordination, the existence of diverse (but robust) *agency* and *enforcement* cultures and expert and judicious application of administrative, civil, and criminal sanctions – therefore improving options in TEC law enforcement responses seems dependant on further focus on these areas (Pink 2013b: 22; emphasis in original).

Although it is not explicitly stated in its inclusion of survey responses and subsequent analysis, Pink (2013b) has undertaken a kind of exploration of various levels of cultural network (formal and informal, normative and overt, functioning and resistant), all to varying degrees of effectiveness and awareness engaged in responding to TEC. That this is not explicitly stated may be due to the fact that the respondents are themselves all members of this intersecting field of networks, as is Pink. So too, in the form of a quasi-network itself, is the survey in which they all participated.

WORKING PAPER 1/2013: HORNE (2013A)

Horne (2013a) outlines the global and regional governmental policy forums that have applied themselves to the issue of transnational wildlife crime as a major form of TEC. The coverage narrows to determine the agreements and considerations conducted at the Asia-Pacific regional level. Horne then provides an outline of the features that might constitute an ideal policy for regulating transnational wildlife crime and, by extension, TEC. He defines policy as a 'mechanism for providing a coherent, consistent, strategic approach to a particular problem, and ensuring that the expenditure of resources is both justifiable and yields the maximum benefit' (Horne 2013a: 1).

International policy

Horne (2013a) establishes that the international agreement that has the most relevance to the issue of transnational wildlife crime is the 1975 Convention on International Trade in Endangered Species (CITES). This is an agreement designed to ensure that the trade in wildlife and wildlife products does not threaten the continued survival of any of the species covered. However, as Horne (2013a: 2) notes, 'there is currently no specific treaty or other policy instrument at the global level dealing comprehensively with the many aspects and facets of wildlife and forest offences, such as illegal logging, poaching, trafficking in fauna and floras, the possession and consumption of illegally traded plant and animal material, and associated offences such as money laundering'.

However, various resolutions have expanded CITES' scope to some of the areas of domestic trade that support the international wildlife trade. In 2010, the CITES Secretariat, the International Police Organisation (Interpol), the United Nations Office on Drugs and Crime, the World Bank, and the World Customs Organisation formed the International Consortium on Combating Wildlife Crime (ICWC). The objectives of the ICWC include 'enhancing a collective effort to address wildlife crime by promoting data sharing, analysis, intelligence, enforcement techniques and resources among enforcement agencies, and working to raise the profile and awareness of wildlife crime among politicians, diplomats, policy-makers and decision-makers, as well as the judiciary' (Horne 2013a: 4).

Apart from this, the international response to transnational wildlife crime has developed in a context of eliding this crime form with organised transnational crime, as well as with corruption through the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Convention Against Corruption (UNCAC). There is evidence to suggest that transnational wildlife criminal activities form a part of broader transnational activities carried out by criminal organisations and syndicates (Sellar 2014). These activities are facilitated by corruption on the part of politicians and public officials leading to further destabilisation of the rule of law in susceptible jurisdictions. Indications are emerging that transnational wildlife crime, if not TEC more generally, as part of operations conducted by criminal organisations, is funding terrorist activities and groups (Interpol-UNEP 2014: 25). Transnational wildlife crime was considered for the first time as a distinct criminal field at the United Nations General Assembly in 2012, although no subsequent resolutions eventuated.

Regional policy

Narrowing the scope of the review, Horne (2013a) argues that in the Asia-Pacific region, two distinct inter-governmental policy discourses have emerged. There is no explicit discussion of the causes of the differences and, similarly, one is not in a position here to establish the cultural, historical, social, political, economic, and other factors that may have contributed to these distinctions. Suffice it to note that differences exist. To a certain extent, where distinct formations parallel those discussed in the literature on organisational culture (not regional, social, national, or ethnic culture), suggested linkages have been made through analysing and synthesising the literature against the data with a view to recommending ways to improve or conduct further research. The purpose is not to make statements as to the problematic issue of causes and effects, especially across societies, cultures, and ethnicities.

Countries in Southeast Asia have addressed transnational wildlife crime regulation directly through the establishment of the Association of Southeast Asian Nations Wildlife Enforcement Network (ASEAN-WEN) which is, in turn, involved in Asia's Regional Response to Endangered Species Trafficking (ARREST). Outside of the auspices of ASEAN, a number of other policy documents have been developed and the Asia-Pacific Economic Cooperation (APEC) forum made explicit mention of wildlife crime in 2012.

By comparison, the Pacific/Oceania region has replicated the general trend of global policy on the issue. The region has developed inter-jurisdictional networks for dealing with transnational organised crime and corruption, in the course of which transnational wildlife crime gets some mention. Parallel to this approach, transnational wildlife crime was mentioned as warranting a response in the Pacific Transnational Crime Assessment published by the Pacific Islands Forum Secretariat. However, the mention of transnational wildlife crime was as a second-order issue.

Policy measurement standards

From the consideration of transnational wildlife crime policies and forums, Horne (2013a) outlines four standards against which the content of the existing global and Asia-Pacific policies can be measured. These standards focus on the content of policies without a factual analysis of their actual implementation. This arises as a product of the time and other resource constraints on the development of Horne's paper, but there are also questions relating to the availability of data that would be needed to assess implementation on the part of any of the countries under review (and probably a substantial number of those not under review). As Horne argues, 'lack of knowledge regarding success or otherwise of policy *implementation* (as opposed to simple policy *existence*), means that it is difficult to translate the suite of responses into likely outcomes "on-the-ground"' (Horne 2013b: 11, emphasis in original).

Data on the implementation of the policies in question does not exist in any readily accessible form. Instead, the best that can be achieved in terms of setting the standards is to take account of a policy's suitability for implementation and its adaptability to the criminal activities under regulation. This latter point drives the setting of the standards, or what Horne (2013a: 7) calls the 'potential requirements of an optimal policy response'. The core problem that Horne considers is that there are indicators that transnational wildlife crime is on the increase in spite of an increase in international policy responses to it. Horne (2013a, 2013b) asks whether the policy responses are, in fact, as effective as they could be. He considers whether the policies are: 'proactive', 'multifaceted', 'multilateral', and 'monitored' (Horne 2013a: 7).

Proactive

In relation to the first criteria, Horne (2013a: 7) argues that one of the preconditions for a proactive policy is strong intelligence: 'Taking a proactive approach is largely predicated on sufficient knowledge of the problem to be addressed'. The previously mentioned lack of data relating to the implementation of policy does, however, seem to find a parallel in the lack of intelligence concerning the scale of transnational wildlife crime. This appears to be the case in the Australian context, and not only in terms of wildlife crime, but rather environmental crime generally: 'Gauging the true extent of environmental crime is no easy task. The incomplete nature of published data and analyses cannot be used to accurately describe trends in the prevalence of environmental crimes' (Bricknell 2010: xiii).

In the particular instance of wildlife crime, the key international resource is the CITES database. However, there are problems with CITES data: 'the format of CITES trade data is quite inconsistent and ranges from individual units, to kilograms, to grams, to pounds, to tons, to tonnes' (Wyatt 2013: 2). There are further irregularities in CITES data, such as infrequent reporting.³ This is indicative of the sometimes varying, incomplete, or inconsistent relationship some member states have with CITES. CITES recognises that not all Parties are equally engaged via the system of categorisation contained in its national legislation project. Even Australia, which CITES has ranked as Category 1 (meaning it is fully

³ This is evident through even a cursory examination of CITES biennial reports. See www.cites.org/eng/resources/reports/biennial.php (accessed 26 March 2014).

compliant with CITES treaty obligations), has issues regarding the quality of its data on environmental crime:

The contrasting nature of the available information on environmental crime in Australia is conspicuous ... Part of this relates to the limited dissemination of data and the scarcity of research on the dynamics of environmental crime as it affects Australia (Bricknell 2010: xvii).

Compounding the limitations of the CITES data is the use to which it can be put in terms of confirming the success, or lack thereof, of an existing policy rather than motivating a course of improvement:

[M]any countries appear to use seizure numbers as evidence they are implementing CITES successfully ... While such data indicates that enforcement agencies are doing *work*, it does not indicate that any such work is *successful* ... [W]ithout knowledge of the amount of actual crime that occurs ... it is impossible to know what portion of illegal activity is prevented through enforcement activity. While it is recognised that obtaining such data may be difficult, it is equally important to recognise that assuming 'seizures = success' could easily lead to a situation where enforcement managers believe their current approach is successful and therefore have little impetus to approve policy approaches proactively (Horne 2013b: 12, emphasis in original).

Multifaceted

A multifaceted policy outlines the use of a number of different instruments to deal with the variety of crime types occurring under the heading of TEC. '[W]ildlife crime is characterised by a complex range of environmental, economic and social factors, and a complex range of networked actors ... To be effective, policies to curb wildlife crime therefore need to address the diverse and actor-specific drives of illegal wildlife trade' (Horne 2013a: 8).

It is not necessary to examine in depth the full extent of options suggested by Horne (2013a) at this point, but, unsurprisingly, a wide variety of approaches offering potential benefits and improvements emerges in the course of the literature reviewed within his paper, including engaging 'complementary policy instruments', building the 'operational capability of enforcement staff', 'developing databases', 'expanding detection programs', as well as increased use of 'sniffer dogs', 'forensic techniques', 'controlled deliveries', 'patrols' and 'informant networks' (Horne 2013a: 8).⁴ He places particular emphasis on the use of demand reduction strategies, noting that these have received less attention than legal and enforcement measures over the past two decades (Horne 2013a: 8; see also Broad and Damania 2009).

A possible causal factor for this emphasis on such measures may be related to the relegation of transnational wildlife crime to a subset of organised crime and governmental corruption, thereby encouraging a policy response of traditional, established policing methods. Police agencies (not environmental regulators) with their particular skill sets, cultures, and preferred methods are engaged in regulating organised crime and corruption. Innovation and adaptability in relation to transnational wildlife crime may prove problematic when the matter is considered by officers with training and experience dedicated to addressing, in strictly limited form, traditional crime types. Indeed, there is evidence to suggest that police officials struggle with the complexity of environmental crime:

Most law enforcement officials have little or no idea of the existence of the complex array of environmental control laws with all the exceptions, changes and omissions. We are naive when it comes to the scientific background needed to put together an environmental pollution case. Neither do we understand or have the knowledge to safely deal with the illegal disposal of hazardous waste. Civil regulatory agencies have this knowledge and the resources to document evidence of a violation. Both criminal and civil agencies must work together in order to succeed (Pearsall 1994: 1).

More importantly, there is the possibility of a cultural belief forming that holds that regulating TEC is only a police-like function. The elision of transnational wildlife crime with organised crime and corruption can reinforce the notion that the only policy response to transnational wildlife crime is one that insists on greater policing, more extreme powers for agents, higher penalties (as deterrents supposedly), and fewer avenues of appeal. White (2009: 491) notes, for example, that 'most discussions of controlling

⁴ Horne is here drawing on Hillborn *et al.* (2006), Elliott (2008), Australian Public Service Commission (2009), Wyatt (2011), Dongol (2011), and Ayling (2012), among others.

international environmental crime tend to concentrate, not unnaturally, on improving enforcement, and there is indeed a wide range of policy options available’.

In environmental agencies, staff can have varying functions that are nevertheless all engaged in the process of regulatory activity: formal investigations and litigation, compliance, monitoring and audit, programmes, licensing and approval, and regulatory design. If a conception of traditional policing as the only suitable response to transnational wildlife crime is fostered and furthered, the majority of staff in an environmental agency (those who are not enforcement specialists) may be encouraged to see transnational wildlife regulation as outside the scope of their job descriptions. Alternately, when approaching the question of transnational wildlife crime, the mismatch between traditional policing methods and the problem can be read by environmental staff as over-regulation and punitive coercion on the part of the state. This can encourage a counter response tending to the other extreme, an equally mismatched posture of permissiveness and appeasement. The point is that an emphasis on enforcement does not necessarily create better enforcement policy. It may instead have the effect of weakening other regulatory approaches. Weaknesses at any point along the scope of regulatory responses can undermine attempts to regulate the environment overall:

Although weak enforcement is generally acknowledged as a widespread and significant problem, the full complexity of the underlying causes of this weakness is often not understood. Consequently the most commonly applied solutions are simplistic ... Even where investments in stronger detection are needed – as is often the case – such investments may underperform unless other weaknesses in the enforcement system are addressed at the same time (Akella and Cannon 2004: 3).

Multilateral

The issue of differing and resistant cultures also impacts on whether measures to regulate international wildlife crime are multilateral, an issue of some importance given the jurisdictional overlap of TEC. As discussed already in the consideration of Pink (2013a), environmental agencies might reasonably be expected to take the lead in wildlife crime policy, but may elect not to if such policy is seen in narrow policing terms. Equally, environmental agencies may simply not find themselves at the forums where such policy is developed and considered, as such forums will have organised crime and corruption as their priorities and therefore attract only police agencies. Such organisational cultural misalignments can only be worsened by differences and disparities in national cultures, legal frameworks, and wealth: this is before taking into account any tensions that may remain from shared histories of invasion, occupation, or colonisation. However, problems in terms of culture, communication, and common cause should be addressed, since ‘effective environmental law enforcement is not possible in the absence of a multilateral response, that is, cooperation and coordination between agencies at the national level and between nations at the regional/global level’ (Horne 2013a: 9–10).

Monitored

Finally, a policy should be subject to change based on its effectiveness. This standard replicates the first by establishing evidence-based criteria for assessment and amendment to policies. The effect is that all four standards are combined into a continuous improvement cycle: ‘Given that resources devoted to addressing wildlife crime are commonly public funds, monitoring and evaluation is also an essential part of demonstrating that a particular approach constitutes appropriate use of resources’ (Horne 2013a: 11).

There are a number of reasons why this is beneficial, but perhaps one of the most notable is that regulatory responses need mechanisms to respond and adapt to the varying and dynamic forms that TEC operations, networks, trading chains, and organisations take. Criminal formations and practices demonstrate a high level of resilience in the face of efforts to stop them (Ayling 2012: 9–12). However, as discussed, even an initial and cursory assessment indicates that there is very little data either on the scale of transnational wildlife crime, or on the implementation of policies designed to restrict such crime. These are fundamental gaps in knowledge that make any assessment of the effectiveness of the policies in place difficult if not currently impossible. There is no way of knowing if the policies are working and therefore no way of knowing how to improve them. The continuous improvement cycle appears unable to start, much less complete a revolution.

WORKING PAPER 2/2013: HORNE (2013B)

Horne (2013b) outlines the policy responses of six Asia-Pacific nations to transnational wildlife crime. The nations reviewed are Australia, Fiji, New Zealand, Papua New Guinea (PNG), Thailand, and Vietnam. Having determined the key policy instruments and institutions each jurisdiction has established to determine its transnational wildlife crime responses, Horne (2013b) conducts a preliminary gap analysis of those policies against the four criteria established in Horne (2013a). However, Horne (2013b: 2) also notes that ‘without understating the potential value of such an evaluation, it is not the intent of this paper to evaluate the degree to which policy is successful or has been effectively implemented (although it does appear to be less than ideal in some cases)’.

National policy responses

In Australia, transnational wildlife crime policy responses are divided between the Australian customs service, the environment department, and the federal police agency, reflecting the three types of agencies outlined in Pink (2013a). At the time that Horne was writing his first paper, Australian Customs (now the Australian Customs and Border Protection Service) did not explicitly mention wildlife within its policy documentation. The Australian federal environment department (then DSEWPaC) had adopted a policy of proactive measures to encourage voluntary compliance. The Australian Federal Police had engaged in a number of network capacity-building projects in the Asia-Pacific region. These were dedicated to transnational organised crime and so only implicitly addressed transnational wildlife crime. Transnational wildlife crime is specifically addressed in the Australian and New Zealand cross-jurisdictional environmental regulatory forum, the Australasian Environmental Law Enforcement and Regulators neTwork (AELERT), primarily through its Operations Cluster (formerly known as the Wildlife Crime Working Group).

Fiji’s chief body for regulating transnational wildlife crime is the Fiji Island CITES Management Authority (FICMA) which is comprised of government officials as well as traders and non-governmental organisation members. FICMA is part of an unofficially affiliated collection of government agencies including the island’s departments of environment, revenue, forestry, fisheries as well as customs, police, and navy. The focus of these organisations at the time was covered under the *Implementation Framework 2010-2014* for the *National Biodiversity Strategy and Action Plan 2007*.

In developing policy responses to TEC, New Zealand governments have combined conservation, customs and primary industries operations via memoranda of agreement into the Wildlife Enforcement Group. This group takes an intelligence-led, priorities-based approach to transnational wildlife crime and coordinates sharing of resourcing and intelligence across related areas domestically as well as in the region.

At the time that Horne wrote his second paper, PNG appeared to be in a transition stage to more effective operations. Symptoms of the unsettled state were evident in the failure of the country’s customs policy to acknowledge the border protection agency’s shared responsibility for regulating TEC alongside the PNG Department of Environment and Conservation, which itself had dedicated minimal capacity and resources to wildlife issues. In contrast, Thailand has a National CITES Committee that brings together representatives from the five key ministries involved in responding to transnational wildlife crime: conservation, agriculture, fisheries, customs, and police. The committee also draws membership from ministries relating to natural resources, environment, agricultural cooperatives, foreign affairs, commerce, marine and coastal resources, forestry, livestock and zoological parks. The primary method of collaboration across agencies is the Thailand WEN, a sub-network of the ASEAN-WEN, which was initially focused on officer capacity-building and maintains a strong programme of courses, workshops, and seminars.

Vietnam has a number of bodies with responsibility for administering wildlife protection legislation. These agencies’ portfolios cover forest protection, agriculture, rural development, customs, environmental policing, economic policing, anti-smuggling, market control, forests, and borders. Their interactions are formalised through memoranda of understanding and committees including the Inter-agency Executive Committee for Vietnam Wildlife Enforcement. There is a Vietnam WEN, which is a sub-network of the ASEAN-WEN. Vietnam conducts training and capacity-building for enforcement and customs officers, monitors and evaluates its policies as they relate to TEC, and participates in a number of network forums.

Measuring national policies

It appears on the surface that the jurisdictions with the strongest policy structures in place to respond to transnational wildlife crime are those that explicitly mention wildlife regulation within the nomenclature of their policy instruments. These are Australia, New Zealand, and at least those of the ASEAN-WEN countries that were examined in Horne (2013b). No comment can be made on the content of the policy instruments or the implementation of the policy responses, but what marks the countries in question is that they have allowed for the collectivisation and coordination of regulatory effort through the functioning of standing committees and formalised inter-agency agreements, they engage in repeated and targeted capacity and capability-building efforts, and they have formed inter-agency operational networks and participate in regional policy and operational networks. The mechanisms for an effective regulatory regime to respond to transnational wildlife crime are nominally, at least, in place. This is recognised by the fact that all the countries possess Category 1 CITES legislation.

Set against the criteria established in Horne (2013a), there are evident issues. Proactivity remains problematic given the lack of data, and thus intelligence, on the predominating forms of TEC as well as on the effectiveness of countermeasures. The reporting undertaken, with an emphasis on seizures, can tend towards an output focus. This is compounded by inadequate support in terms of technological resources and organisational culture. It is not stated within the paper, but there is the possibility that one of the factors limiting the resource base for effective transnational wildlife crime regulatory activity may actually be organisational cultural issues. The evidence suggests transnational wildlife regulatory policies remain reactive and therefore potentially *ad hoc* and untargeted. This has the further effect of policies containing contradictions that can create system gaming opportunities, such as can occur with the blending of licit and illicit activities over the trade continuum. An example of this is the trade in avian species. As Wyatt (2013: 17) observes, ‘the pet industry raises regulatory challenges because ... part of the demand is reliant upon captive breeding programmes. Captive breeding provides a means to launder wild-caught reptiles and birds into the legitimate market’.

Part of the problem may relate to a misconception regarding the correct approach to instances of criminality. Proactive measures are not adopted because there is no proactive consideration of the potential for criminal behaviour, subsequent harms, and attached system manipulations, ranging from gaming behaviour to bribery and other forms of corruption: ‘Conceptually, the difference may arise between implementing a trade policy and implementing a crime policy, and as history has shown us simply implementing a trade policy (i.e. CITES) has not prevented the proliferation of wildlife crime’ (Horne 2013b: 13).

The lack of multilateral coordination at the sub-agency level can compound matters. Agencies may participate in collaborative arrangements, but that doesn’t mean their staff do. There is a possible disconnect, even conflict, between the structures of organisations, taken individually or in networked relation to one another, and their cultures. They do not combine in generating a range of policies and responses to the issue in question. Instead, cultures of resistance reinforce internal hierarchies to limit opportunities for access to inter-agency collaborative forums:

[M]ost of the collaborative policy measures in place across the case study countries appear to have the effect at the agency level ... While such measures may be successful in creating a network of *agencies*, the degree to which it creates a network of *officers* may be far less, because any officer wishing to participate in the agency network would likely have to navigate a certain degree of ‘hierarchy’ within their agency to do so (Horne 2013b: 14, emphasis in original).

In this context, as demonstrated at higher levels in Horne (2013a), there is some failure in monitoring of arrangements to bring about change and improvement. Monitoring is occurring, but there are questions about its effectiveness, given that it seems the monitoring itself is not being effectively monitored. As Horne (2013b: 14) notes, ‘evaluating the degree to which existing policy responses met this requirement is more difficult than the other requirements simply due to a lack of appropriate evidence’.

Overall, it seems that in spite of the documentation and organisational memberships and while information is scant, there are strong indications of *ad hoc* and reactive approaches to transnational wildlife crime that are not based on sound intelligence and that do not occur outside of cultural constraints. These cultural forms inhibit access, progress, and increased coordination. At the same time

they facilitate existing normative behaviour which includes low notice to transnational wildlife crime, low resourcing, poor support, and use of inaccurate or insufficiently indicative measures of achievement.

THE COLLECTIVE WORK

Horne (2013a) is meant to be read in conjunction with Horne (2013b), while Pink (2013a, 2013b) are also meant to be read together. In effect, Dr Horne and Mr Pink have each written one large work that has been split in half due to the working paper format. They both acknowledge this within the content of their respective papers. In addition, as stated previously, when viewed as a totality, the papers run from the general to the specific, considering firstly the broad structures that impact on TEC, then the policies that emerge in the course of those structures in responding to transnational wildlife crime. Additionally, when assessed together, and given they were designed with the writers consulting with one another (albeit not with the notion of the papers forming a consistent discourse), certain themes emerge that can provide indicators for improvements to the regulation of transnational wildlife crime as well as future areas for research.

Lack of data

The most telling commonality that appears across the four papers is the paucity of knowledge on the subject matter. It is not known what the scale of TEC is. This lack of data operates at the international level, as evidenced in the variations present in CITES data, as well as at the regional, national, and sub-national levels where intelligence gathering and performance measurement is often hindered by poor technologies. A further lack of knowledge relates to the regulation of environmental crime. There are shortfalls in the data on the extent to which policies and procedures have been implemented, not to mention the effectiveness of whatever it is that is being done, or even a set of standards for determining what might constitute effectiveness in the first place. In short, not enough is known about either the problem or the solution.

Organisational cultures

The literature on organisational cultures suggests that one of the causes for gaps in a comprehensive understanding of the field of TEC and its regulation might be a form of cultural malaise, a lack of momentum for responding appropriately to the crime type. This state of inertia might exist in addition to all of the social, cultural, and economic factors relating to the regulatory agencies' places of origin, in spite of genuine efforts on the part of at least sectors of agencies to address the issues. There are indicators that at organisational and individual levels, in spite of a manifest concern for the environment, as a result of inexperience, structural deficiencies and bureaucratic operations, cultures may have emerged and been fostered in environmental agencies (as well as agencies that support transnational environmental regulatory efforts) that have allowed incomplete, sometimes *ad hoc* or otherwise deficient, fact-finding, knowledge and intelligence.

Cultures, as manifestations of human behavioural groupings, tend to be built on shared values. These are often unfounded assumptions and beliefs to which all members of a particular culture ascribe and which they activate in support of their own behavioural choices: 'in trying to identify cultural groupings within an organization we are looking for patterned and persistent perceptions of social reality' (McMahon 2006: 9). Cultural functions include defensive and self-propagating elements. One such element would be to fail to seek or even discount any factual data that threatens the unconscious norms of the collective: '[c]hanges to institutional structures and organizational goals threaten existing cultural groupings, and the pursuit of those values pursued by these groupings' (McMahon 2006: 90). Within many environmental regulatory agencies, the key detrimental cultural groupings are seen to operate along commodity-specific distinctions: 'successful environmental regulation cannot be achieved in an organization that is cross-cut by cultural cleavages, institutional separations along the lines of environmental media (referred to by those working in the United States EPA [Environmental Protection Agency] as *stovepiping*)' (McMahon 2006: 3, emphasis in original).

That said, there is evidently some threat of balkanisation across all environmental policy and operational clusters, if not across governments in general. Dysfunction may be a state into which government agencies easily fall:

Some might object that the management philosophy and structures we employed are ultimately unsustainable ... that the bureaucracy will crush it all eventually. Perhaps that's true in the long run, but then again perhaps

it's true that bureaucracy crushes everything in the long run. There is no good reason not to try something bold when we can, and to sustain it as long as circumstances continue to justify it (Kelly 2012: 144).

Organisational management

Senior management appears to play a key role in slowing or accelerating an organisation's descent into ineffectiveness. Executive consensus can build an organisational sense of mission strong enough to overcome at least some of the problems that emerge from structural divisions. A robust culture can to some extent exceed institutional deficiencies. As Wilson (1989: 95) suggests, 'when an organization has a culture that is widely shared and warmly endorsed ... we say that it has a sense of mission. A sense of mission confers a sense of worth on the members, provides a basis for recruiting and socializing new members, and enables the administrators to minimize the use of other incentives'.

Equally, a lack of consensus at the executive level can have a deleterious effect on the operation of an agency and therefore, in the context of this discussion, the regulation of TEC. Notably, and as discussed, Horne (2013b: 14) suggests that even where agencies have agreements for coordinating efforts and building collective capacity, individual officers can be stymied from making use of these agreements due to the need, euphemistically, to *navigate the hierarchy*.

Agency and crime types

While the focus of the four papers has appeared to be on environmental regulatory agencies with negotiating, accommodating, and conciliatory cultural behaviours, it is worth stating that differing but just as unconscious and unexamined normative values drive police agencies (Fleming 2006: 107; Fleming and Wood 2006) as well as customs and port authorities. These normative values relate to the standing of environmental crime in comparison to other crime types as well as the standing of environmental regulatory agencies in direct comparison with more police-like cultural institutions, a comparison that does not favour the environmental regulatory agency:

[A] major organisational enforcement challenge is that while police agencies have an existing and extensive pool of expertise and resources to enforce the criminal law, they have little experience or expertise in the enforcement of EPL [Environment Protection Legislation]. On the other hand, environment agencies have a very limited pool of expertise and resources to enforce EPL, coupled with substantial advisory, regulatory and compliance responsibilities – creating at the very least, a perception that environment agencies have conflicting roles (Blindell 2006: 3).

The result can be forms of resistance leading to difficulties in terms of regulating TEC. This is evident in jurisdictions where no distinct notice is given to TEC on the part of policing bodies, but rather the crime type is folded in to transnational organised crime, corruption, and terrorism. Given the complexities of environmental crime, the flexibility of approaches needed to address it, and the diversity of regulatory instruments available to redress, repair, and otherwise respond to it (as in Blindell 2006; White 2009; Horne 2013a, 2013b; Pink 2013a, 2013b), agencies with traditional policing cultures may not be best suited to the task within the context of reacting to the activities of terrorist and other criminal organisations.

Simultaneously, and perhaps a little ironically, the inclusion of TEC with those other serious crime types also offers a great many benefits. The correlation between TEC and organised crime as well as corruption has proven critical in terms of demonstrating the seriousness of TEC and the harm it causes (Interpol-UNEP 2014; White House 2014: 1, 2; Standing and Stewart 2013: 1). The linkages across crime types go some way towards minimising the notion that TEC is victimless, a soft crime type, or otherwise not worthy of note. So, while including TEC types within other crime types has meant it does not receive due attention, it nevertheless means it has received at least some attention when it previously had not. Not only that, the eliding of transnational environmental and other crimes has initiated a process of communication between agency types that may lead to greater understanding, from which the result is a unification of responsive measures, thereby maximising limited resources and overcoming difficulties.

Networks

The unification of regulatory efforts through communication emerges as one of the key, if not the key factor in establishing and operating an effective TEC regulatory system. Communication in network forums between officers engaged in regulating TEC within agencies, across agencies, across agency types, and between jurisdictions has the potential to overcome cultural obstacles while still giving a

speaking position to vernacular knowledge. It also works to some extent to overcome potential managerial resistance, commodity-specific divisions, shortfalls in technology, and differences in political regimes. It allows for increased consistency in operational practices even where laws differ and accommodates the fact that TEC, as a crime type, both ignores jurisdictional boundaries and often definitional ones, merging with other crime types in an ongoing process of maximising illicit advantage and profit.

FUTURE RESEARCH

As a course of research, the four working papers present possible areas for further exploration and study. Further research into TEC responses and regulatory regimes could be conducted. In terms of the data provided by the working papers, such research would benefit from a determination of the best metrics available for measuring the effectiveness of regulatory activity concerning TEC, or at least some further assessments could be made of regulatory measurement and assurance systems.

At the same time, there is a strong body of evidence suggesting that where environmental regulation is ineffective, this is a combination of cultural and organisational factors that revolve around commodity-specific divisions within agencies, personal processes of labour identification, lack of senior management consensus, and bureaucratic inertia. There is something to be said for a course of research that finds effective and repeatable ways to overcome resistance across and within agencies involved in the regulation of TEC.

POLICY DIRECTIONS

The question now is the extent to which the four papers under review have contributed to governmental policy and where they might potentially contribute further. In a way this is a determination as to whether the work met the aims of DoE (and to an extent the VFs themselves) when contributing to the TEC Project: 'The aim of this paper is to furnish environmental regulatory agencies with information, options, and strategies so they can more effectively detect, deter, and disrupt this form of transnational crime' (Pink 2013a: 1).

The importance of risk managing environmental harms as part of an agency's regulatory capability, as raised in Pink (2013a), has guided the development of the internal projects to risk rank legislation for which the DoE has responsibility and to undertake sanctions mapping to ensure scaled, appropriate responses to potential breaches of the law. The risk ranking of legislation is also part of a consideration by DoE of the resourcing issues discussed in Pink (2013b). Overall, DoE is undertaking a five-year regulatory capability improvement and assurance programme, the Regulatory Capability Development Programme, which is designed, among other things, to maximise regulatory resources to achieve operational effect.

One of the paths to maximising resources, as also discussed in Pink (2013b), is to involve regulatory operational staff in the legislative and regulatory design process. This is an ongoing part of DoE regulatory reform, in the course of which a number of pieces of legislation are under review. These include the *Historic Shipwrecks Act 1975* and the premier piece of Commonwealth environmental law, the *Environment Protection and Biodiversity Conservation Act 1999*. In relation to this latter piece of legislation, a business improvement project is being developed to facilitate the relationship between compliance and assessment officers to ensure the better production of approval conditions determined under the Act. Concurrently, under the Regulatory Capability Development Programme, there are projects to develop regulatory conditioning guidance material and a regulatory framework checklist and procedure with attached awareness and training sessions.

Awareness and training sessions are one of a number of forums that DoE is increasingly using to ensure better internal communication through network arrangements. A Regulatory Community of Practice, Regulatory Practitioners Network, and Regulatory Management Network have been established which bring together members from across commodity-specific divisional arrangements. At the same time, senior management support for regulatory capacity and activity is encouraged through the Regulatory Executive Committee, which, unexpectedly, has given rise to a series of lessons learned sessions, taking the form of a senior executive community of practice.

This networking extends beyond DoE into national, regional, and international forums. The research conducted within the four working papers by the two VFs has informed DoE (and governmental) involvement in the United Nations Commission on Crime Prevention and Criminal Justice (UNCCPCJ) meeting in Vienna (April 2013); the International Crime Cooperation Division (October 2013); AELERT (November 2013); the Environmental Crime and the World conference, Tilburg (November 2013); and the 13th United Nations Congress on Crime Prevention and Criminal Justice (Crime Congress) meeting, Bangkok (January 2014).

CONCLUSION

It is tempting at this point to think that the only problem remaining is to overcome all the varieties of resistance within organisations undertaking the task of regulating TEC, whether that resistance is overt, adversarial, or merely a product of shortfalls in knowledge and experience arising from regulatory immaturity. While not a small task, it might be hoped that such forms of resistance will at last be negated and a future state of operational ease will be reached: an ideal state. However, resistance is unlikely ever in its entirety to be overcome. This is just as likely to be the case with TEC itself:

[I]t is important to recognize that the primary challenge is to manage risks from environmental conflicts. This implies there are no permanent solutions. It is not possible to 'fix' the environment so that hazards no longer appear. The best that we can achieve is progress in reducing environmental risks (Emison 2012: 37).

The regulatory role is an ongoing one. It involves continually attempting to engage in concert as many diverse formations across their organisational manifestations as possible, with the stated goal of achieving more efficient and effective regulation of TEC.

The TEC Project constitutes an example of this. The working papers by the VFs have succeeded in determining aspects of TEC regulation that can be improved and better supported. DoE is already taking this information and working it into a programme for improvement.

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