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## ‘Green Crime’

Transnational Environmental Crimes as a new category of international crimes?

LORRAINE ELLIOTT — 6 February, 2017



Millions of dollars worth of smuggled elephant ivory intercepted by customs officers each year, shipping containers filled with hundreds of tonnes of illegally traded pangolin scales and kiln-dried geckoes, forests plundered for high-end timber species, rampant criminality in the fisheries sector, and the illegal disposal of hazardous waste across borders: in a report released in June 2016, INTERPOL described environmental crime as a growing international problem that threatens natural resources, peace, development and security. The UN Office on Drugs and Crime has included chapters on the illegal trade in environmental resources in its Transnational Organized

Crime Threat Assessment reports, alongside more familiar transnational organized crime challenges of drugs, arms, and people smuggling. Under resolutions adopted by the UN General Assembly and by the UN Economic and Social Commission, governments are being urged to designate illicit trade in wildlife a serious crime as defined in the UN Convention Against Transnational Organized Crime, that is, subject to punishment by at least four years deprivation of liberty. What they are all talking about – though they don’t use the specific term – is transnational environmental crime, sometimes shortened to TEC.

Although the categories of illicit practice that are generally described as transnational environmental crimes are of long-standing, the concept itself is of more recent origin. It entered the political lexicon about a decade ago, embedded in quite distinct academic discussions on criminal justice and on non-traditional security . In strict international law terms, transnational environmental crime does not exist: there is no treaty law that defines environmental crime as an international crime, that prohibits specific international actions or practices, or that establishes sanctions against individuals who break those prohibitions. In the absence of a strict legal definition, TEC has become something of a ‘term of art’ in criminology, governance and regulation, global public policy, international political economy and conservation ecology. It can be understood in normative terms, as a category of offences, and as a framework for analysing illicit networks.

The broadest understanding of transnational environmental crime relies on a socio-normative approach: it identifies things that are bad and harmful to do because of their environmental consequences and because of the way they

undermine the rule of law. This includes trading in endangered, threatened and protected species; trafficking timber; dumping hazardous and toxic waste; and smuggling ozone-depleting substances. It also includes carbon crime, particularly fraudulent practices around emissions trading, and fisheries crime. This listing of harms, in turn, relies on a more purposeful approach to transnational environmental crime as a kind of collective noun that describes a range of issue areas and associated activities.

In this context, TEC describes multiple offences that violate the various provisions that governments adopt in domestic law to meet their obligations under a series of trade- and conservation-related multilateral environmental agreements (MEAs). The key MEAs are probably well known, but if not it is worth recounting them briefly here. The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora sets out in broad terms what is permissible and what is not in wildlife trade. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal does something similar with respect to environmentally harmful wastes. The 1987 Montreal Protocol includes controls on the production and consumption of and trade in ozone-depleting substances as part of its objective of containing and reversing ozone depletion.

None of these are ‘crime agreements’: rather they establish guidelines for how governments should legislate to manage the harvesting, extraction, production, use of, and trade in particular substances or species. They exhibit a preference for controlling rather than prohibiting trade. Of the three, only the Basel Convention refers to illegality or to criminal actions. Nevertheless, each has become a focal point for

vocal international debate about, and decision-making and action on what does or should constitute illegal practice in their respective issues areas.

In my own work, I build on this approach, using the concept of transnational environmental crime to describe the range of illicit and criminal practices that are involved in the illegal trade in wildlife, timber, ODS and other pollutants and wastes as they move from source to final market. TEC therefore includes illegal extraction and harvesting of wildlife and timber, illegal production and consumption of chemicals that deplete the ozone layer, physical concealment of illicit consignments transported within and across borders, fraudulent use of export and import permits and other documentation, corruption of government officials, and money-laundering of illicit profits.

TEC also describes the way that these practices, and those who are behind them, are linked to each other through networked relationships. It is common to read claims that 'criminal networks' (or criminal syndicates, or organized criminal groups, or even transnational organized crime groups) are behind illegal wildlife trade and timber trafficking. But there is often little conceptual or empirical clarity on the form or substance of such networks. The assumption is that we know a criminal network when we see one. Using the idea of transnational environmental crime to describe a set of connected practices, not all of which might be criminal in terms of the law, helps to define a network as a complex of trade routes and smuggling modalities.

As a framework for analysis, TEC can tell us something about how illegal chains of custody and profit function, how they are sustained and where their individual strengths and

weaknesses lie. It can help us to identify functional nodes within a network – for example poachers, harvesters, chain saw operators, warehousemen, transporters, cutters and carvers, exporters and importers, purchasers and retailers – and the transactions between those nodes. Those transactions can be occasional and opportunistic with those involved having little knowledge of what happens or who is involved further along the chain. Or they can be much more organized, with high levels of asset specificity and skill sets, multiple trade routes and sophisticated forms of concealment.

This levels-of-analysis approach to understand TEC – as a normative statement on public bads, as a category of offences, and as a framework for analysis of criminal networks – can help to increase our knowledge and improve intervention and law enforcement outcomes.

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