

Illicit authority and transnational environmental crime: the ‘dark side’ of private authority in earth system governance

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Introduction

The conceptualization of agency beyond the state in ‘earth system governance’ has been variously captured in ideas about civil society, private authority and private governance. Investigations of private authority have focused mainly on market authority and the role of private sector actors. Drawing on the typology developed by Hall and Biersteker, this paper examines a form of private authority that has been paid much less attention in the earth system governance literature, that of illicit authority. In the public policy and environmental management literature, there is extensive coverage of particular forms of transnational environmental crime, such as illegal logging and timber smuggling, wildlife smuggling, illegal waste trade, and the black market in ozone-depleting substances and other regulated or prohibited chemicals. However the broader phenomenon of transnational environmental crime is under-researched in the global environmental governance literature. The research presented here provides a corrective to this by drawing on two key concepts in global governance theory – networks and authority. The paper begins with an overview of illegal and criminal activity, its ecological, social and economic consequences. The second part of the paper develops a typology of the actor-networks that undermine rather than strengthen the current architecture of earth system governance. It pays close attention to conceptualising market networks involved in the ‘chain of custody’ of illicit commodities, social networks in the form of criminal and other alliances, and political-criminal networks that complicate the state/non-state and public/private distinction. The final section of the paper offers some preliminary observations about how we might understand the nature of illicit authority generated by such networks when the link between authority and legitimacy is severed.

II. Transnational environmental crime (TEC): transactions beyond the state

Environmental crime and illegal activity constitute a particular dimension of the non-compliance and enforcement problem that is central to global environmental governance. As a broad category of activity, environmental crimes with transnational possibilities include the illegal extraction and smuggling of forest and oceans resources, wildlife trafficking (including live or dead plants and animals or parts thereof), the black market in ozone depleting substances, the illegal movement and dumping of toxic and hazardous waste (sometimes referred to as ‘waste tourism’¹, ‘garbage imperialism [and] toxic terrorism’²), the illegal movement of other prohibited or regulated chemicals, and, potentially, the illegal extraction and use of genetic material. This broad range of activities is made transnational in four ways. First, goods or commodities such as timber or wildlife are sourced illegally in contravention of national legislation and then smuggled across borders. Second, environmental goods and resources are traded or dumped across borders in contravention of international law. Third, the perpetrators of such activity either cross borders themselves, or establish networks of agents who together manage the movement of such goods. Finally, profits are moved across borders, often laundered into the licit economy. The ‘chain of custody’ crimes associated with environmental smuggling and transnational environmental crime range from small scale opportunistic activity through to systematic and large-scale organized crime involving money laundering and corruption, parallel trading and the exchange of illegal environmental goods for other forms of illicit commodities.

Establishing clear parameters for what constitutes illegal or criminal activity can be made more difficult precisely because of the transnational movement of environmental goods and resources. The least difficult cases arise where a clear prohibition regime is in place under international law and is given legal effect in national legislation. This applies, for example, to the trade in CFCs and other ozone-depleting substances in a way that contravenes the import and export control regimes established under the Montreal Protocol. It applies to the dumping or relabelling of hazardous wastes as a means of circumventing the consent mechanisms of the Basel Convention. And it applies to the smuggling of wildlife species listed under the protective appendices of the Convention on International Trade in

¹ Y A Van der Meer (1992) ‘Combating environmental crime in an international context’ in Proceedings of the Second International Conference on Environmental Enforcement: Volume 2 (Washington DC: International Network on Environmental Compliance and Enforcement).

² Jennifer Clapp (1999) ‘The illicit trade in hazardous wastes and CFCs: international responses to environmental “bads”’ in H. Richard Friman and Peter Andreas (eds) *The illicit global economy and state power* (Lanham MD: Rowman and Littlefield), p. 97.

Endangered Species. More difficult problems of illegality or criminality arise in cases where species or resources or commodities are managed not under international law but under national legislation. Timber may be deemed illegal because it is logged from national protected areas, or because it is logged without appropriate licenses or because the required environmental impact assessment is not carried out. Where such resources are moved across borders, the illegal activity becomes a transnational crime. But often national law is unclear. Illegal logging, for example, has become an envelope term for a range of chain of custody practices: extraction crimes such as harvesting in contravention of national law (although national forest laws are themselves often unclear about what constitutes illegal extraction), logging without a licence or in circumstances where concessions have been obtained on the basis of fraudulent information or intent, or logging inside protected areas and national parks; transportation crimes involving the smuggling of timber across borders or to countries outside the region; and processing crimes such as the re-labelling of timber products as legally harvested for export-on (timber laundering).

Other problems in identifying or defining illegal goods and therefore criminal practices arise not because of uncertain law but because of the conditions of transboundary markets and trade. Some environmental commodities are laundered into the cross-border licit economy whereas others remain in the shadow, illicit economy. Logs can be 'laundered' and passed off as legally sourced with forged documentation that certifies them as CITES compliant (if the species is listed under the Convention) or as having come from legitimate forest sources. Some protected and endangered wildlife species such as those being smuggled to order for collectors remain in the illicit economy. But others, including parts thereof, turn up in local markets (including 'cyber-markets' such as e-bay), in zoos, or in research laboratories, sometimes with forged documentation that presents them as having been bred in captivity or as related but not endangered species, but also sometimes simply 'for sale' in the licit economy. Determining whether a manufactured item is illegal can be complicated when it is the mode of extraction of a resource that is illegal or criminal rather than the raw resource itself (compared, for example, with the drug trade where the goods remain illicit from production to sale and consumption). Trans-shipment through third countries or through free trade zones provide opportunities for re-documentation and re-import or trading-on of illicitly sourced goods, thus further complicating the difficulties of determining whether goods are legally sourced or not.

As with other forms of illicit, illegal and criminal cross-border activity, the reach, scope and value of transnational environmental crime is partly speculative but there is little

doubt that it is extensive. Environmental crime has been characterized as one of the fastest growing areas of criminal activity, worth in total an estimated \$US22 to \$US31 billion a year (or more) to criminal syndicates around the world.³ As much as 25 percent of the international trade in wildlife and plants, for example, is thought to be illegal either because it contravenes the Convention on International Trade in Endangered Species or because the species trafficked are protected in individual countries. Estimates from Interpol and the G8 value this global illegal wildlife trade at \$US10 to \$US20 billion a year, ranking with drug smuggling and arms trafficking as major black markets. Others suggest that the value could be as high as \$40 billion a year.⁴ The profits can be high even for small scale operations with individuals of some species (ranging from exotic parrots to rare orchids and snowdrops) fetching large sums on the black market. Ounce for ounce, for example, rhino horn can be more valuable than gold or class A drugs.⁵

The illegal trade in timber and timber products is also an increasingly significant component of an otherwise legal (although often unsustainable) international trade. To take just one example, some estimates suggest that over half the tropical timber imported into the EU each year has been logged illegally.⁶ Other environmental commodities, or commodities with environmental consequences, are also traded illegally across borders. In the mid-1990s, according to UNEP estimates, between 16,000 and 30,000 tonnes of illegal CFCs (chlorofluorocarbons) were being traded in contravention of the Montreal Protocol, putting the value of the black market in ozone depleting substances at something in the vicinity of £300 million a year.⁷ Contraband CFCs have been described as ‘rivalling cocaine as among the most profitable illegal imports crossing US borders’.⁸

The illegal extraction of and trafficking in or smuggling of environmental goods is a serious countervailing force in global environmental governance. It contributes to

³ Statement by Andrew Lauterback, Chair, Interpol Environmental Crimes Committee, to the 5th International Conference on Environmental Crime, Lyon, 2 and 3 June 2005 <http://www.interpol.org/Public/EnvironmentCrime/Meetings/LyonJune2005/Default.asp>

⁴ Comments from the Environmental Investigation Agency, reported in ‘Eco-crooks outwitting law agencies’, April 2002 [http://www.enviocrime.com/forum/_disc5/00000017.htm]

⁵ See ‘Organised criminal gangs deal wildlife and drugs’, *Environment News Service*, 19 June 2002. A kilo of rhino horn can trade for as much as \$US30,000 on the Asian market; see Greg L Warchol (2004) ‘The transnational illegal wildlife trade’, *Criminal Justice Studies* 17(1), p. 59.

⁶ *BRIDGES: Trade Bio Res*, 20 November 2004 (International Centre for Trade and Sustainable Development), p. 2

⁷ UNEP (2001) ‘Illegal trade in ozone depleting substances: is there a hole in the Montreal Protocol?’ *OzonAction Newsletter Special Supplement*, no. 6 (Paris: UNEP Division of Technology, Industry and Economics); Tamás Ország-Inad (1997) ‘The CFC smugglers’, *International Police Review*, September/October, p. 14.

⁸ Charles W Schmidt (2004) ‘Environmental crimes: profiting at the Earth’s expense’, *Environmental Health Perspectives*, 111(2): A97.

environmental degradation and undermines attempts in the public and private sphere to establish and implement remedies. The environmental consequences are substantial. Illegal logging takes place in some of the world's most vulnerable forests and is a major driver of deforestation in regions such as Southeast Asia where forest loss occurs at a rate far higher than elsewhere in the world. The ecological consequences include soil erosion, changes to local climate and water retention patterns, increased susceptibility to flooding and landslides. Timber smuggling and the illegal trade in wildlife destroy habitats, exacerbate species endangerment and contribute to loss of biodiversity. In Columbia, for example, wildlife smuggling is now the second biggest threat to biodiversity.⁹ The continued illegal production and consumption of CFCs and the smuggling of these and other prohibited or regulated pollutants undermine global attempts to manage problems such as ozone depletion or chemical pollution. The covert and illegal dumping of hazardous and toxic wastes results in poisonous pollution of water tables, river systems and local ecosystems which affects animal, human and ecosystem health, often in the world's poorest countries.

The impacts are also economic and social. Governments and communities are robbed of revenues and resources as well as economic and ecological benefits. The World Bank calculates that illegal logging, for example, could cost timber-producing countries globally something between \$10 and \$15 billion a year in lost revenue (although not all illegal timber is smuggled across borders).¹⁰ The smuggling of illegal CFCs into the United States, estimated in the mid-1990s to be the equivalent of between one-quarter and one-third of US production, meant tax revenue losses to the US government of \$100 to \$200 million a year.¹¹ The political economy of TEC includes the indirect, intangible and hidden costs of environmental degradation: the loss of future resource revenue, the costs of soil erosion, loss of biodiversity and water services, or the human, social and economic costs of the floods that are the side-effects of extensive and so-often illegal deforestation. TEC markets also threaten legitimate businesses and impede the development of free markets.¹² Illegal logged and smuggled timber, for example, can be laundered into the legitimate market at a lower price because the companies or agents involved rely on cheap labour and avoid paying taxes. The

⁹ Mara E Zimmerman (2003) 'The black market for wildlife: combating transnational organized crime in the illegal wildlife trade', *Vanderbilt Journal of Transnational Law*, 36(5): 1657-89 at p. 1660.

¹⁰ Forest Trends (n.d.) *Strategies to combat illegal logging and forest crime* (Washington DC: Forest Trends). This figure is supported by other analyses; see for example Julian Newman and Sam Lawson (2005) *The last frontier* (London: Telapak/EIA), p. 2.

¹¹ Cited in Clapp, 'The illicit trade', p. 113.

¹² See Zimmerman, 'The black market for wildlife', p. 1673.

American Forest and Paper Association estimates that illegal timber entering the market has depressed world timber prices by something between 7 and 16 percent.¹³

Global environmental governance

The objectives of global environmental governance – or earth system governance as articulated at this conference – are broad: protect species and habitat; to reverse existing environmental degradation and to rehabilitate damaged ecosystems; to prevent or limit loss of environmental integrity; to regulate or prohibit economic practices that contribute to environmental degradation and pollution; to regulate and where necessary prohibit polluting substances; to ensure that those who are made most vulnerable by environmental degradation are assisted to manage the economic and social as well as ecological consequences; and to ensure that the global environmental rule systems are negotiated through participatory and democratic structures and generate norms and procedures that are equitable and just.

The multilateral environmental agreements (MEAs) under which governments have attempted to deal with various forms of transnational environmental crime fall within this broad framework. They are not law enforcement agreements. In general, they establish control and consent mechanisms for import and export of what are assumed to be otherwise legally produced or acquired resources or species. Yet the unintended consequence of the prohibitions implicit in these control agreements has been to create incentives for black market and criminal activity. The most notable of these agreements are CITES (the 1972 Convention on International Trade in Endangered Species), the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the more recent Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemical and Pesticides in International Trade (1998) and the Stockholm Convention on Persistent Organic Pollutants (2001). Their purpose was to regulate or prohibit particular substances (CFCs, POPs, hazardous chemicals and wastes) or practices (trade in endangered species) as a means to enhance conservation and environmental protection, rather than specifically to control criminal activity. These MEAS generally contain no formal requirements for governments to include categories of activity such as wildlife smuggling in their criminal law. There is no specific international treaty that deals with transnational environmental crime as a law enforcement or criminal activity. The preamble to the UN

¹³ See 'Down in the woods', *The Economist*, 25 March 2006, pp. 73-5 at p. 74.

Convention against Transnational Organized Crime does suggest that the convention will constitute an effective tool against criminal activities such as illicit trafficking in endangered species of wild flora and fauna. However transnational environmental crime generally falls outside the serious crimes framework that the Convention offers. Few governments impose the penalties of four or more years imprisonment for activity such as timber smuggling or wildlife smuggling that are required to count as a 'serious crime' under the Convention.

The governance of TEC, to the extent that it exists, suggests a pattern similar to other areas of global environmental governance in its mix of public and private authority. These arise through cooperation among law enforcement, intelligence and customs investigation agencies who can share information and provide mutual assistance; through the work of non-governmental organizations who become part of the governance mechanism rather than something outside it; through the work of international and hybrid organizations which, while formally intergovernmental, have more flexibility to work with private actors such as banks, financial institutions and relevant industry sectors. Exposure of the extent of transnational environmental crime has relied on non-governmental organizations and it is NGOs in particular who have lobbied for more stringent regulatory responses as well as being active in establishing governance rule systems. Policy development, monitoring, interdiction and prosecution also relies variously on the work of NGOs, specialized agencies, regional organizations and government agencies. Some of the more active 'inter-governmental' responses have come not through formal treaty agreements but through more informal agreements. Not all are directed specifically at TEC. In 1995, the G8 launched its Group of Senior Experts in Transnational Organized Crime (known as the Lyon Group) and the 1998 G8 summit specifically referred to the importance of combating transnational environmental crime. Specialised agencies have also been active in this field. Project Skyhole Patching to intercept illegal shipments of CFCs is an initiative of the World Customs Organisation and its network of Regional Intelligence Liaison Offices (RILO). The Green Customs Initiative which focuses on training and capacity building counts among its partners the World Customs Organisation, UNEP's OzonAction programme, Interpol and the secretariat of a number of MEAs. Interpol has a wildlife crimes working group and a pollution crime working group, and desk officers to deal with each. It has also established the eco-message system to develop a database on international environmental crime although there is little evidence that the system is extensively used by national law enforcement or border control agencies. Other initiatives, such as the Global Forest and Trade Network (GFTN) or the

Forest Law Enforcement and Governance (FLEG) establish public and private partnerships or rely on actors in the private sector.¹⁴

Agency beyond the state

Transnational environmental crime undermines the global governance objectives outlined in the previous section. The very existence of illicit environmental activity suggests at minimum that existing rule systems are limited in scope and inadequate in either (or both) content or implementation. As explored earlier, the environmental consequences of TEC are extensive. From a governance perspective, however, TEC is more than just a series of market transactions – albeit one that involves covert and illicit activity – for which we do not yet have adequate response strategies. It generates a form of agency or actorness beyond the state that has fundamentally negative consequences for global environmental governance. Actors involved in the commission of transnational forms of environmental crime are in the business of subverting rather than amending the rule systems of global environmental governance and the regulatory or surveillance schemes by which they are implemented. By functioning outside the rule of law, TEC calls into question the capacity and therefore the authority of states, state-based institutions and the adequacy and success of international law. As well as challenging the authority of states over the movement of commodities, people and profits across borders, TEC weakens or undermines the authority of states as agents of the prohibition norm. Where governments prove reluctant to deal with demands for responsive rule systems – in the face of illegal logging for example – it is not only their authority but their legitimacy as well that is called into question.

Criminal activity that is organized (that is, something more than ad hoc or opportunity crime) is usually defined in terms of the numbers of people involved (more than three) and the prolonged nature of the activity over time, often using various forms of distribution network.¹⁵ There is now solid evidence that organized crime groups are actively involved in and, indeed, are often central to the most lucrative areas of environmental crime and the violation of MEAs, especially the timber smuggling, the illegal trade in wildlife and the

¹⁴ Corporate actors have also been taking unilateral action. In 2001, for example, the Dutch bank ABN AMRO announced that it would not ‘finance companies or projects that are involved in, collude with or purchase timber from illegal logging operations’; see ‘Down in the woods’, p. 75.

¹⁵ This is the approach taken by the National Criminal Intelligence Service in the UK, for example. See Dee Cook, Martin Roberts and Jason Lowther (2002) *The international wildlife trade and organized crime: a review of the evidence and the role of the UK* (Godalming: WWF-UK), p. 21.

illegal cross-border trade in hazardous wastes.¹⁶ Crime groups involved in other kinds of illicit activity are diversifying into environmental crime. Zimmerman reports, for example, that criminal groups such as South American drug cartels, the Russian mafia, and smuggling operators in Africa have all been discovered to be involved in illegal wildlife trading.¹⁷ TEC sometimes goes hand in hand with other kinds of illegal commodities such as drugs and arms, involving parallel trafficking (using the same smuggling routes for different goods, combining illegal shipments, or using ostensibly legal shipments (eg of wildlife) to conceal other forms of illegal goods).¹⁸ Environmental crime provides ‘venture capital’ for other illicit activities ranging from other kinds of crime to funds for insurgencies and rebel groups. And it involves (indeed requires) extensive collaboration and corruption of public and corporate actors and, quite often, military collusion in or even control of environmental crime.

The conclusion is that TEC constitutes a form of perverse or countervailing authority in global environmental governance. It is a major factor in environmental degradation and continued pollution. It undermines MEAs, functions in opposition to other forms of private and public-private environmental governance even as it motivates such responses, challenges the authority of the state and its agents, even as it seeks to compromise such state-based agency through corruption and bribery. And it threatens the security not just of habitat, ecosystems and species, but of those communities who are most vulnerable either to the consequences of environmental degradation or to the demand for illegal resources. We need, therefore, to understand how this form of authority functions. As Tim Buthe points out, the analytical focus in the global governance literature has shifted from whether non-state actors matter to *how* they matter.¹⁹

¹⁶ See Communiqué of the G8 Environment Ministers, March 1999; Cook et al, *The international wildlife trade*, p. 4. See also Zimmerman, ‘The black market for wildlife’ p. 1657; Warchol, ‘The transnational illegal wildlife trade’. TRAFFIC International, on the other hand, has suggested that organized criminal activity within the illegal wildlife trade is relatively rare; see ‘Eco-crooks’.

¹⁷ Zimmerman, ‘The black market for wildlife’, p. 1668; see also Gavin Hayman and Duncan Brack (2002) *International environmental crime: the nature and control of environmental black markets* (London: Royal Institute of International Affairs), p. 8.

¹⁸ Smuggled turtles and marijuana have been found in the same illegal shipments (BBC News (1998) ‘Environmental crime – a global problem’, April 5 [<http://www.bbc.co.uk/1/hi/world/74317.stm>]). Live snakes have been stuffed with condoms full of cocaine (‘Organised criminal gangs deal wildlife and drugs’, *Environment News Service*, 19 June 2002). See also Craig van Note on the ‘tuna/cocaine’ connection – ‘Global crime, corruption and accountability’, http://www.geocities.com/profwork/ws/van_note.html]; Zimmerman, ‘The black market’; and Cook et al, *The international wildlife trade*.

¹⁹ Tim Buthe (2003) ‘Private authority and international affairs’, *Journal of International Affairs*, 57(1): 245-53 at p. 245.

Private authority

Private authority beyond the state, Klaus Dingwerth observes, ‘has become a popular theme of academic writing’.²⁰ This popularity is a feature of recent work on global environmental governance with earlier work on non-governmental organizations and scientific organizations being supplemented with work on private regulatory arrangements and public-private partnerships.²¹ The burgeoning interest in private authority is a response to two things. The first is the empirical evidence of the expansion of private regulation of global issue areas. Claire Cutler, whose work on private merchant law was central to this literature, has noted that ‘state-based ... international law and “public” notions of authority are being combined with or, in some cases, superseded by nonstate law, informal normative structures and “private” economic power and authority as a new transnational legal order takes shape’.²² Dingwerth picks up on this theme when he suggests that the kind of significant influence that private authority and private actors have arises in the ways that they ‘shape the meaning of key normative concepts, induce discursive shifts that constrain the ways in which sustainability politics may or may not be framed, and establish new regulatory frameworks’.²³

The second impetus for the exploration of private authority has been the desire among international relations and global governance scholars to develop sophisticated conceptual frameworks and theoretical propositions to understand this new legal order that Cutler refers to and those who are part of it. This desire reflects, in part, a dissatisfaction with some of the more repetitive themes of the globalization literature which sets the ‘hyperglobalisers’ against the skeptics on whether or not the state is ‘in retreat’. There is a normative component to this as well. Conventional, hierarchical forms of governance based on an interstate order as the primary locus of global public policy are argued to be limited (in the more benign version) and dysfunctional (in the more critical version) in addressing the worst aspects of globalization including environmental degradation and the displacement of environmental harm.

²⁰ Klaus Dingwerth (2006) Private transnational governance and the South: a comparative analysis, paper presented to the 47th Annual Conference of the International Studies Association, San Diego, 22-25 March, p. 1.

²¹ See, for example, Philipp Pattberg (2005) ‘The Institutionalization of Private Governance: How Business and Non-profits Agree on Transnational Rules’, *Governance: An International Journal of Policy, Administration, and Institutions*, 18(4): 589-610; Philipp Pattberg (2005) ‘The Forest Stewardship Council: Risk and Potential of Private Forest Governance’, *Journal of Environment & Development* 14(3): 256-374; Benjamin Cashore (2002) ‘Legitimacy and the Privatization of Environmental Governance: How Non State Market-Driven (NSMD) Governance Systems Gain Rule Making Authority’, *Governance*, 15(4): 503-529; Dingwerth, *Private transnational governance*.

²² A. Claire Cutler (2003) *Private power and global authority: transnational merchant law in the global political economy* (Cambridge: Cambridge University Press), p. 1.

²³ Dingwerth, *Private transnational governance*, p. 1.

In their seminal work on authoritative private actors, Hall and Biersteker build on earlier work by Claire Cutler and others to suggest, first, that our understanding of private authority needs to move outside the confines of international political economy and, second, that doing so requires explanatory categories that go beyond market authority (or what Cutler refers to as the authority of merchant law).²⁴ Non-state actors matter in global governance, they argue, not just because of what they do but because they have or acquire authority. As well as recognizing the conceptual usefulness of market authority, Hall and Biersteker's typology also includes moral authority, applied to NGOs and to religious groups, and illicit authority exhibited by mafia, mercenaries and organized crime. It is the latter which is of most interest here. Hall and Biersteker suggest two overlapping sources of authority. The first is that 'to have authority, actors must be perceived as legitimate'. Or, to put it another way, legitimacy arises when private actors 'obtain some form of obligation from those subject to their authority'.²⁵ Authority also comes when private actors step in to compensate for 'the failures of sovereign [public] authority to fulfill certain basic functions ... provide fundamentally public goods',²⁶ or 'step into a power vacuum left by a weak state'.²⁷ This model that links authority, legitimacy and public goods, they argue, applies to illicit authority as well as to market and moral authority although they do recognize that illicit actors generate 'more problematic locations of authority'.²⁸

There are some problems with this conceptualization of private authority. The first is insufficient conceptual clarity between *being* an authority and *having* authority (or being authoritative). Thus when Hall and Biersteker observe that even private actors can be 'accorded the rights, the legitimacy and the responsibilities of *an* authority',²⁹ this suggests a much narrower meaning of the forms of authority that are under investigation. The expectation that authority exists only in lock-step with legitimacy is a product of theories of legitimacy that rely on propositions about the state. Private authority seems, therefore, to be conceptualized through a statist epistemology, even if the agents of authority are private

²⁴ See A Claire Cutler, Virginia Haufler and Tony Porter (eds) (1999) *Private Authority and International Affairs* (New York: State University of New York Press) and A Claire Cutler (2003) *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy* (Cambridge: Cambridge University Press).

²⁵ Thomas J. Biersteker and Rodney Bruce Hall (2002) 'Private authority as global governance' in Rodney Bruce Hall and Thomas J. Biersteker (eds), *The emergence of private authority in global governance* (Cambridge: Cambridge University Press) p. 204.

²⁶ Biersteker and Hall, 'Private authority as global governance', p. 210.

²⁷ Hall, Rodney Bruce and Thomas J Biersteker (2002) 'The emergence of private authority in the international system' in Rodney Bruce Hall and Thomas J Biersteker (eds) *The emergence of private authority in global governance* (Cambridge: Cambridge University Press), p. 16.

²⁸ Hall and Biersteker, 'The emergence of private authority in the international system', p. 7

²⁹ Biersteker and Hall, 'Private authority as global governance', p. 204; emphasis added.

rather than public actors. The character of authority remains the same even if the actors that exercise it are private or non-state. Defining authority as distinct from power by embedding it in legitimacy seems an unduly narrow understanding of authority, particularly if the character of private governance includes illicit authority. It runs the risk of non-falsifiable propositions – that illicit groups exercise authority if they generate some form of social consent (as a key component of legitimacy) but that if there is no social consent then they have only exercised power. This also seems an unduly narrow understanding of power.

A second problem is that private authority is understood primarily as something that is residual of state authority, or is accorded by states, or yielded by them, or that arises only when public authority is limited. This approach characterizes much of the literature on transnational crime which is presented as a symptom of declining state authority, either because of the failures of internal governance or as evidence of a state's incapacity (and therefore diminished authority) in managing the border-loosening practices of globalization. This form of 'authority capture' is expected more likely to arise in weak states, transitional states (en route either to market economies or some form of democracy), times of uncertainty, or where authoritarian structures which rule by coercion (in the Gramscian sense) rather than consent enable or encourage such activity.³⁰

I suggest here that these residual characteristics and the collapse of legitimacy with authority are not entirely helpful in understanding illicit authority of the perverse and countervailing kind outlined earlier in this paper. Thinking about the conditions of state capacity in which transnational environmental crime might arise provides only a partial corrective, although the more thoughtful of those analyses recognize that transnational criminal activity might also be a cause rather than just a product of state/interstate weaknesses. To understand perverse or countervailing authority in global environmental governance, we need to understand how criminal activity functions to take advantage of the governance deficit and how it contributes to it. The strategy proposed here is to introduce the concept of networks to that of authority.

In simple terms, networks are 'actors ... linked to each other through stable formal or informal relationships of communication and exchange'.³¹ Duffield defines them as 'linkages

³⁰ This is not to suggest that state/interstate incapacity is not a problem. Failures of transnational environmental governance and rule-systems to deal with or prevent or minimize TEC arise for a range of reasons, including a lack of cooperation in law enforcement, mutual assistance and intelligence sharing, inadequate cooperation on capacity building and transfer of technology and resources, as well as a political unwillingness on the part of some countries to have these matters addressed in international or global fora.

³¹ Mette Eilstrup-Sangiovanni (2005) 'Transnational networks and security threats', *Cambridge Review of International Affairs*, 18 (1): 7-13 at 7.

that bring together different organizations, interest groups and forms of authority in relation to specific regulatory tasks'³² and Elke Krahmman points to the advantages of network analysis 'for understanding the relations and interactions between public and private actors'.³³ The literature recognizes a range of network types - advocacy networks (Keck and Sikkink), knowledge networks as 'mechanisms for the international diffusion of ideas and the promotion of policy transfer',³⁴ transgovernmental networks of national officials (Slaughter), global public policy networks as strategies for more effective problem-solving. Networks are characterized as horizontal, voluntary, decentralized, fluid (and sometimes transitory), resilient and flexible in responding to changing circumstances.

While the focus has been on networks that function in the 'licit space' scholars of global governance and International Relations theorists have, as Eilstrup-Sangiovanni observes, paid considerable attention 'to the potential for misuse of the capabilities provided by network forms of organization for illicit and criminal activities'.³⁵ The literature on networks assists in mapping and categorizing actual transactions, identifying interconnections among actors in the chain of custody that defines transnational environmental crime, and contemplating how networks generate authority structures that can either support or, in this case, undermine global environmental governance. The proposition is that authority capture and the exercise of perverse authority arises because networks enable criminal groups and those involved in criminal activity to take advantage of weak authority structures and legal failures on the one hand and to exploit the ease of global transportation and profit-repatriation that comes with a liberalized and globalized economy.

My research to date is suggestive of three kinds of illicit (or shadow) networks which generate particular forms of perverse authority: market networks, social networks and political-criminal networks. They are made distinct here for analytical purposes but they overlap in the actual practice of TEC. Further, not all forms of perverse authority wielded by criminal activity in TEC are aimed at all forms of state authority (that is, perverse criminal authority does not seek, for the most part, to establish an *alternative* or *replacement* form of authority). Rather some networks seek only to neutralize the state and enforcement agencies in particular fields of endeavour. The typology of illicit authority networks that is presented

³² Mark Duffield (2001) *Global governance and the new wars: the merging of development and security* (London: Zed Books), p. 44.

³³ Elke Krahmman (2005) 'Security governance and networks: new theoretical perspectives in transnational security', *Cambridge Review of International Affairs* 18(1): 15-30 at p. 15.

³⁴ Diane Stone (2002) 'Introduction: global knowledge and advocacy networks', *Global Networks*, 2 (1): 1-11 at p. 5,

³⁵ Eilstrup-Sangiovanni, 'Transnational networks and security threats', p. 7.

in this paper is heuristic. It is intended to provide a framework for further research to test the strength of this typology and to refine it where necessary. The examples offered in the following sections draw primarily on examples of TEC in the Asia Pacific.

Market-networks

As with other forms of criminal and illegal activity, TEC is characterized by high profit margins and generally low risk for those involved. It is common in the literature for transnational criminal activity to be characterized as another form of enterprise activity in what Phil Williams calls the ‘neo-Clausewitzian’ approach – transnational crime as ‘simply the continuation of business by other means’.³⁶ Commentators see in enterprise crime (distinct from ‘grievance crime’) parallels with the corporate sector as it operates in the licit economy. Peter Andreas provides an exemplar of this position, suggesting that ‘regardless of their illegal status, the economic activities of transnational criminal organizations are in many ways the quintessential expression of the kind of private-sector entrepreneurialism celebrated and encouraged by the neoliberal economic orthodoxy’.³⁷ Groups working within the illicit economy ‘scan the environment for opportunities, seek to make rational judgments about opportunities and dangers, and seek to maximize their profits where this does not involve unacceptably high levels of risk’.³⁸ This is what Lupsha refers to as the predatory stage of transnational crime in which criminal activity moves to bypass legitimate market structures.³⁹ Despite these apparent similarities, actors involved in illegal environmental trade cannot invoke the same sources of authority as those who function in the licit economy.

What makes enterprise crime authoritative as a countervailing force in global environmental governance, in the ways described earlier in this paper, is the reliance on market-criminal networks. Market networks are chain of custody networks through which illegally sourced or produced environmental commodities such as timber, CFCs, waste or wildlife are moved from source to destination across borders. The chain of custody is ‘an international market of supply and demand in which the crime-entrepreneur operates as a

³⁶ Williams, Phil (2002) ‘Transnational organized crime and the state’ in Rodney Bruce Hall and Thomas J Biersteker (eds) *The emergence of private authority in global governance* (Cambridge: Cambridge University Press), p. 164.

³⁷ Andreas, Peter (2002) ‘Transnational crime and economic globalization’ in Mats Berdal and Mónica Serrano (eds) *Transnational organized crime and international security* (Boulder: Lynne Rienner Publishers), p. 37.

³⁸ Phil Williams and Roy Godson (2002) ‘Anticipating organized and transnational crime’, *Crime, Law and Social Change* 37(4): 311-55 at p. 324.

³⁹ See Felix Berenskoetter (2006) *Under Construction: ESDP and the ‘Fight Against Organised Crime*, Working Paper, Department of International Relations, London School of Economics, 5 July, p. 8.

criminal merchant'.⁴⁰ Market networks function once the environmental goods have been sourced, extracted or produced. In other words, TEC is an economy of trade not just an extraction or production process. Networks enable the movement of goods across borders either through smuggling (where commodities such as wildlife for example remain concealed) or various forms of laundering (where environmental commodities are re-documented as legal or from legitimate sources to disguise their true nature). Trade proceeds through concealment, misdeclaration, permit fraud, laundering.⁴¹ The extent of the illegal environmental trade in timber from Southeast Asia, for example, would simply be impossible without well organized networks of shipping companies and agents, brokers and middlemen in places such as Singapore, Malaysia, Hong Kong and China who are able to charter cargo vessels, fake documents, issue letters of credit and forge connections between buyers and sellers. Newman and Lawson reveal how syndicates involved in timber smuggling out of Southeast Asia have clearly defined roles, as protection agents, as transport brokers, as agents who identify buyers.⁴² There is also conclusive evidence of the participation in the illegal timber trade of otherwise legitimate companies with reports, for example, of illegal logging by Asia Pulp and Paper (APP) in Yunnan and by Malaysian timber companies in Indonesia and PNG.⁴³

Perverse authority is sedimented when the network holds together. Wildlife smuggling, for example, will continue to threaten species and undermine CITES and the Convention on Biological Diversity if the chain of custody enables stolen animals and plants to reach the final buyer. Those who engage in illegal logging do so on the understanding that there is a market for the timber and that the relevant chain of custody network will function as a distribution network with global reach. Market networks therefore link predicate crimes (the initial activity) with secondary crimes. Critical nodes also enable particular environmental commodities such as timber and the profits of TEC to be laundered into the legal economy. We know, for example, that the profits from illegal logging in Indonesia accrue in accounts in Singapore and Hong Kong.⁴⁴ We know also that the nodes of such networks cross over from the illicit into the licit economy and involve lawyers, bankers,

⁴⁰ Van Duyne, Petrus C. (1996) 'The phantom and threat of organized crime', *Crime, Law and Social Change*, 24(4): 341-7, at p. 342.

⁴¹ Cook et al, *The international wildlife trade*, p. 19.

⁴² Julian Newman and Sam Lawson (2005) *The last frontier* (London: Telapak/EIA), p. 17

⁴³ See World Rainforest Movement (2005) *WRM Bulletin* no. 98 (September), Yoon Szu-Mai (2004), 'Storm over Asian-Pacific timber trade', CorpWatch, 5 March 2004 (reproduced at Global Policy Forum, www.globalpolicy.org/socecon/envronmt/2004/0305asiatimber.htm) or any of the reports produced by EIA/Telapak or by Global Witness.

⁴⁴ See Newman and Lawson, *The last frontier*, p. 9

accountants and other legitimate actors. TEC also generates secondary markets. For example, transportation permits which help to launder illegally sourced timber are reported to be readily available on the black market.⁴⁵

Successful interdiction or prosecution can disrupt individual market-criminal networks but, as noted above, the informal and flexible nature of networks can bring with it a higher degree of resilience where critical nodes are few. As Eilstrup-Sangiovanni points out, ‘this is particularly relevant for illicit networks where scattered and loosely connected nodes make it difficult for law enforcers to pinpoint and unravel them’.⁴⁶

Social networks

Williams and Godson caution against assumptions that illicit markets are highly organized. They are, they suggest, ‘often disorganized ... with multiple participants who cooperate and compete in complex and unpredictable ways’.⁴⁷ The persistence of market-networks in the illicit economy, which demands concealment, is not simply a process of exchange. It can also be understood as a form of social network based on complex webs of affiliation which build on fluid and loosely organized sets of relationships and interactions.⁴⁸ While market-networks generate flexibility, social networks generate resilience. The relationships in social-criminal networks can take a variety of forms including client-patron relationships and ethnic ties. Chinese triads, for example, are almost certainly involved in smuggling of wildlife for traditional asian medicines.⁴⁹ Japanese yakuza have capitalized on the illegal trade in hazardous waste.⁵⁰ In some of these more organized situations, criminal groups will also be characterized by hierarchical links and personal relationships which facilitate control within the group and within the network of exchange.⁵¹ In a globalised world, social-criminal networks are also ‘virtual’, often relying on the internet for interaction and transaction. It is

⁴⁵ See Marcus Colchester, [title] reproduced in World Rainforest Movement, WRM Bulletin #98, September 2005.

⁴⁶ Eilstrup-Sangiovanni, ‘Transnational networks and security threats’, p. 9

⁴⁷ Williams and Godson, ‘Anticipating organized crime’, p. 323.

⁴⁸ See Phil Williams (1999) ‘Risk management by transnational criminal organizations: threat or opportunity for law enforcement’ in Carolina G. Hernandez and Gina R. Pattugalan (eds) *Transnational crime and regional security in the Asia Pacific* (Quezon City, Manila: Institute for Strategic and Developmental Studies), p. 102; Gavin Hayman and Duncan Brack (2002) *International environmental crime: the nature and control of environmental black markets* (London: Royal Institute of International Affairs), p. 7.

⁴⁹ CITES Secretariat cited in United Nations Secretary-General (2003) Report to the ECOSOC Commission on Crime Prevention and Criminal Justice, *Illicit trafficking in protected species of wild flora and fauna and illicit access to genetic resources*, E/CN.15/2003/8, para 30.

⁵⁰ Charles W Schmidt (2004) ‘Environmental crimes: profiting at the Earth’s expense’, *Environmental Health Perspectives*, 112(2): A96-103 at A101.

⁵¹ See, for example, Allan Castle (1997) *Transnational organized crime and international security*, Working Paper no. 19 (Vancouver: University of British Columbia, Institute of International Relations).

likely also that the idea of social-criminal networks can help to conceptualise the relationship between criminal groups and people in local communities who provide the labour for illegal activities such as illegal logging, timber milling, capturing or killing wildlife, or in CFC production.

The requirement for concealment and protection in the illicit economy demands social-criminal networks based on ‘higher degrees of interpersonal trust’.⁵² While trust remains a crucial authority resource for TEC, it is often a flexible commodity. Reports on TEC in the Asia Pacific, for example, show that information provided to law enforcement agencies on illegal logging or wildlife smuggling often comes from inside market networks as revenge or to close down rivals.⁵³ Social networks maintain control through the use or threat of use of discipline and violence including against local communities who provide the source labour for various illegal endeavours and also against those who oppose them. The Environmental Investigation Agency has reported violence and intimidation against local communities and those trying to expose the involvement of corrupt officials in illegal logging activity in Indonesia. In Tibet, leaders of shahtoosh anti-poaching have been killed by gangs involved in the illegal killing of the chiru (the protected antelope whose fine hair is used in making shahtoosh shawls).⁵⁴

Political-criminal networks

As with other forms of transnational crime, those involved in TEC have moved to take advantage of corrupt officials and politicians – or what Williams and Godson refer to as the ‘upperworld’⁵⁵ - in a way that complicates the idea of agency ‘beyond’ the state. This ranges from petty corruption to corruption at the highest levels. Examples from the ‘petty’ end of the scale (the examples here are from Indonesia) include the involvement of senior police and customs officials in ordering the destruction of evidence prior to prosecution, district heads in issuing land clearing permits for National Parks where logging is illegal, and Ministry of Forestry officials knowingly issuing transportation documents for illegally harvested timber.⁵⁶ The International Crisis Group reports that, in Indonesia, ‘the illegal resource

⁵² Eilstrup-Sangiovanni, ‘Transnational networks and security threats’, p. 9.

⁵³ See Julian Newman and Sam Lawson (2005) *The last frontier* (London: Telapak/EIA).

⁵⁴ See EIA/Telapak (2000) *Illegal logging in Tanjung Puting National Park: an update on the final cut report* (London/Jakarta: EIA/Telapak) and Cook et al, *The international wildlife trade*, p. 21-2.

⁵⁵ Williams and Godson, ‘Anticipating organized crime’, p. 333.

⁵⁶ See Illegal Logging Response Center (2005) *A systemic 10-step program to curb illegal logging and improve law enforcement in Indonesia* [Draft Plan], October; available at http://www.eu-irc.or.id/Activities_Detail.asp?PKID=520

industry is protected and sometimes even organized by corrupt elements in the civil service, security forces and legislature'.⁵⁷ Global Witness suggests that the military are also at the core of the problem of illegal logging in Myanmar and Laos.⁵⁸ Julian Newman and Sam Lawson, writing for Telapak and the Environmental Investigation Agency, point out how 'companies involved in timber theft from Papua are aided every step of the way by officials from the military, police and forestry departments'.⁵⁹

Some commentators suggest that corruption should best be understood not as a pathology of the state but as an instrument of risk management for criminal groups.⁶⁰ Political-criminal networks clearly enable those engaged in illicit market and social networks to evade control mechanisms. Nevertheless, in its most extensive stage, this form of infiltration represents Lupsha's symbiotic stage of organized crime, in which criminal groups become fully integrated in the economic and political institutions of the state, often wielding significant political power.⁶¹ Serrano raises the interesting question about whether the business of organized crime, in the context of what are here referred to as criminal-political networks is simply about facilitating the supply of illicit goods – the market approach – or whether some forms of organized crime networks seek to protect and consolidate 'exclusive governing authority'.⁶² The bribery and corruption associated with transnational environmental crime undermine good governance, corrode the institutions of the state and compromise core values such as democratic processes and the rule of law. Where the military is involved, it acts no longer under government or civil control, but in the shadow economy associated with the crimes of the powerful. This is not simply about perverse authority by which strategies such as bribery and corruption are used by (criminal) agents beyond the state with the consequence that environmental governance is undermined. Rather this is about the perverse use of otherwise legitimate authority by agents of the state. Widespread corruption undermines the credibility and functioning of law enforcement agencies, the judiciary and the

⁵⁷ International Crisis Group (2001) *Indonesia: natural resources and law enforcement*, Asia Report No. 29 (Jakarta/Brussels: ICG), p. 1; see also EIA/Telapak (2002) *Above the law: corruption, collusion, nepotism and the fate of Indonesia's forests* (London/Jakarta: EIA/Telapak), p. 8.

⁵⁸ Siem Bok (1999) 'The fight against illegal loggers', *The Economist*, April, p.24

⁵⁹ Newman and Lawson, *The last frontier*, p. 8.

⁶⁰ Phil Williams (2002) 'Transnational organized crime and the state' in Rodney Bruce Hall and Thomas J Biersteker (eds) *The emergence of private authority in global governance* (Cambridge: Cambridge University Press), p. 174-5.

⁶¹ See Berenskoetter, Under construction, p. 8.

⁶² Mónica Serrano (2002) 'Transnational organized crime and international security: business as usual?' in Mats Berdal and Mónica Serrano (eds) *Transnational organized crime and international security* (Boulder: Lynne Rienner Publishers), p. 18.

legal system. The state is also made insecure when the agents of the state are either unable to resist or are actively involved in organized crime and illegality.

Some (preliminary and brief) concluding thoughts

The discussion here has focused on linking ideas about networks and authority to understand the impact of transnational environmental crime activities on global environmental governance. As noted above, TEC undermines MEAs and functions in opposition to other forms of private and public-private environmental governance. It challenges the authority of the state and its agents even as it seeks to compromise such state-based agency through corruption and bribery. The involvement of politicians and business, bureaucratic and military elites, as well as lesser officials in sustaining illicit markets subverts normal practices of state-based governance, constituting ‘shadow states’.⁶³ And it threatens the security not just of habitat, ecosystems and species, but of those communities who are most vulnerable either to the consequences of environmental degradation or to the demand for labour in the acquisition of illegal resources.

As a form of ‘agency beyond the state’, criminal activity is usually conceptualized as illicit authority in global governance in a way that links it with legitimacy. As observed earlier, this seems to limit the ways in which we can understand illicit authority of the kind that is represented in transnational environmental crime. At very least it suggests that if there is no legitimacy of some kind, then there is no authority (only power or influence). The suggestion here is that identifying this as perverse or countervailing authority better captures the form of agency that TEC represents. The concept of networks develops this further by suggesting a possible mechanism by which this particular form of agency beyond the state is transformed into perverse authority. Networks enable criminal groups and those involved in criminal activity to take advantage of weak authority structures and legal failures on the one hand and to exploit the ease of global transportation and profit-repatriation that comes with a liberalized and globalized economy. In effect, networks enable a form of ‘authority capture’.

The investigation here suggests three, related research projects. The first is to test and refine the heuristic network typology offered here through further research on the network activities that characterize transnational environmental crime and criminal activity. The second is to explore whether network responses based on public/private governance are likely

⁶³ On the concept of shadow states, see Rosaleen Duffy (2005) ‘Global environmental governance and the challenge of shadow states: the impact of illicit sapphire mining in Madagascar’, *Development and Change* 36(5): 825-43

to be more successful than hierarchical inter-governmental mechanisms in responding to the networks generated by TEC. The third is to consider further the implications of a disjuncture between authority and legitimacy. This suggests exploring ways in which conceptualizations that draw on the idea of legitimate authority as the 'right to rule' are modified in the case of countervailing authority which is illegitimate as well as illicit. This enables us to understand authority relationships not just in terms of rule-makers and rule-followers but also in terms of rule-subverters.