Applying Australian laws to seize illegally harvested logs from Indonesia (Wuhan Colloquium 2009)

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Abstract
Outline:

Transnational organised crime
Environmental crime linkages
Logging case study
Transnational enforcement

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Applying Australian laws to seize illegally harvested logs from Indonesia

A case study in transnational environmental law enforcement cooperation
Outline

• Transnational organised crime
• Environmental crime linkages
• Logging case study
• Transnational enforcement
Transnational Organised Crime

• **Treaties**
  - 1988 Vienna Drug Trafficking
  - 1974-2004 Counter-Terrorism
  - 2000 Transnational Organised Crime & Protocols
  - 2003 Corruption

• **UN Institutions**
  - UNODC
  - Crime Comm & Congress
  - UNICRI
Transnational environmental harms

- **Pollution**
  - Water pollution
  - Air pollution
  - Carbon accounting
  - Waste product shipment
  - Hazardous risk generation
  - Habitat destruction

- **Biodiversity**
  - Wildlife
  - Logging
  - Fishing
  - Genetic resources
  - GMOs
  - Bio-contamination
Environmental crimes

• Breach of standards
  – National environmental laws

• Contrast: licit environmental harm
MEA breach
– illegal but not a crime

• Compliance
  • Report, monitor, audit, self-regulate

• Enforcement
  • Compliance planning
  • Administrative orders

• Criminal prosecution
  • Criminal and civil offences
Transnational environmental crime – Definition

• Breach of environmental law
  • Domestic environmental law

• Activity across border
  • Goods, organisation, transactions

• Contrast: international crime
  – Breach of international law
  • e.g. war crime
Transnational crime fighting tools

New law enforcement tools to combat TOC

Against corruption
Against money laundering
Against obstruction of justice
Against crime groups

Mutual assistance
Cooperation
Transnational organised crime
- Environmental linkages

  - 10% of $150bn licit market

- Criminal actors
  - Transnational corporations
  - Criminal organisations
  - Ad hoc operators
Illegal logging in Indonesia

60%-88% illegal
1/3 forests
Merbau, ramin, mahogany
20% global ghg emissions
Australia imports wood

$4 billion p.a.
9% illegal ($400m)
Australian-Indonesian Timber Nexus

Case scenario: Imported wood based products
Indonesia - criminalisation of illegal logging

Serious crime
Decentralisation, corruption
Australia - criminalisation of illegal logging

Minor offences
Federated, disparate
Comparison - illegal logging offences

Not prosecuted in Indonesia
Non-indictable in Australia
Dual criminalisation of transnational organised crime?

- Transnational
  - Malaysian exports
- Organised
  - corporate structure
- Criminal
  - laundering, corruption, obstruction of justice, participation
Australian legal action to help combat timber crime in Indonesia?

Legal cooperation
- intelligence sharing
- evidence gathering
- asset tracing
- proceeds forfeiture
- arrests
- prosecutions
Indonesia – criminalisation of laundering money

PPATK – Not corrupt but cannot prosecute
Australia – criminalisation of laundering money

Predicate offence – illegal logging, theft, bribery, smuggling
Australian case analysis

Money laundering offences

- Criminal Code
  1. Prima facie case
  2. Proof beyond reasonable doubt

Civil confiscation regimes

- Proceeds of Crime Act
  1. Belief of predicate offence
  2. Proof on probability
Legal risks

• Standards for legitimate sourcing?
  – Certification schemes?
  – Global norms?
  – Reliability?

• Standards for proof
  – Identification techniques
  – Prosecution’s burden
  – Importer’s burden
Implications and conclusions

Globalisation:
- Environmental harms &
  Environmental protections
- Illegal activity &
  Law enforcement
Am I a ‘fence’?

Shameless Promotions:

Following the Proceeds of Crime:
*Forests, Fish and Filthy Lucre*

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Thank You

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