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

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

## Abstract

### Outline:

Transnational organised crime

Environmental crime linkages

Logging case study

Transnational enforcement

## Keywords

colloquium, wuhan, indonesia, logs, harvested, 2009, illegally, applying, seize, laws, australian

## Disciplines

Arts and Humanities | Law

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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

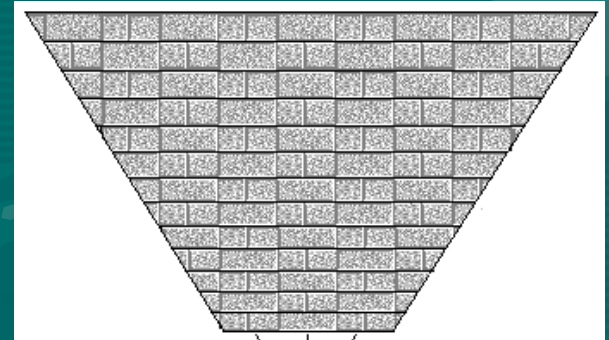
- Breach of standards
  - National environmental laws
- Contrast: licit environmental harm



# 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

- Environmental crime \$22-33 bn p.a. (2000)
- Illegal logging \$15 bn p.a. (2005)
  - 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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