ENVIROMENTAL CRIME AND JUSTICE

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CONTEMPORARY society generates ever higher quantities of waste given the rate of consumption and production. The use of chemicals in manufacturing products has also increased the toxicity of waste (Pellow, 2007). Waste is not a mere useless residue, but is also a valuable commodity. Hazardous waste has an important share in the waste trade, with high costs of treatment and disposal. Most waste trade is regional (for example, within the EU) or takes place between developed countries that have waste processing facilities. The trade flows that are most likely to result in inadequate recycling or disposal are those from the global North (EU, UK, USA, Australia) to South (Africa, South East Asia and South America). The legitimate reasons for the trade in (hazardous) waste are the absence of appropriate domestic treatment facilities, the closer proximity of those in other countries, the need for valuable secondary materials in hazardous waste to be used in production processes in receiving countries and, most importantly, cheaper processing or disposal.

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The deliberate transportation of hazardous waste to countries that do not have the necessary processing facilities is a major form of environmental crime. Waste fraud can refer to the activities of waste treatment corporations that are in non-compliance with waste regulations, but also to organised crime trading waste on the black market (Ruggiero, 1996). Data about the trade in (hazardous) waste and waste generation are incomplete, but an estimated 20 per cent of containers exported from the EU contain waste and an estimated 20 per cent of those are in violation of export bans or administrative requirements such as missing or incomplete forms for waste trading (Baker et al., 2004).

Waste and toxic waste in particular, is a health hazard, especially when dismantling and disposal policies and practices are substandard. Toxic substances stay in the environment for many years after they are absorbed in the air, water and soil, and often stay unnoticed harming the ecosystem and animals as well as people living and working nearby.

Given its potential harm, international environmental conventions deal with waste: examples are the Basel Convention on the Transboundary Movement of Hazardous Waste and its Disposal (1989) and the European Union Waste Shipment Regulation (from 2006). Although the trade in hazardous waste is one of the most regulated, several governance challenges remain.

A number of challenges are inherent to the governance of (hazardous) waste trade. Governance in that sense refers to initiatives that control and prevent the illegal trade in (hazardous) waste and the resulting environmental harm. A first challenge is the criminogenic nature of waste as a product. It is prone to fraud, because it can be fairly easily disguised by
mixing it up or selling it as a second hand commodity (Gibbs et al., 2010). Waste also has an inverse incentive structure: although certain fractions of waste are valuable (such as metal), when you own (hazardous) waste you generally need to pay for environmentally sound treatment and disposal. The search for cheaper ways to treat and/or dispose of waste is thus an important motivator for the illegal trade.

A second challenge is the criminogenic nature of the waste sector. It is a very complex sector with a diversity of actors involved at different stages. In collection, transport and treatment, multiple smaller companies try to compete with the few big ones. As a consequence, the transition from legal to illegal can occur at several stages of the waste process. This can happen in national and cross-border transport but also in collection or disposal. The waste sector has also been linked to price fixing and racketeering (Van Daele et al., 2007).

A third challenge is in the regulatory framework and the interpretation of waste, recyclables and reusable goods. This has important legal ramifications because exports of waste to non-OECD countries are illegal but exports of second hand products for re-use are legal. This for instance applies to non-OECD countries are illegal but exports of second hand products for re-use are legal. This for instance applies to the case of electronic waste, where it can be challenging to distinguish between waste and second hand electronics. Every day more knowledge about harmful substances emerges but the discussion about what is a second-hand product and what is waste also depends on the cultural and socio-economic context. It is not easy for the regulatory framework to incorporate these complexities.

Implementation is a fourth challenge. Similar to other international environmental agreements, the Basel Convention and EU waste legislation relies on individual member states’ willingness and resources to implement them. Only limited government resources are invested in controlling the illegal trade in hazardous waste. Some EU member states, for instance, fail to regularly inspect waste shipments. Imposing minimum requirements for inspections and controls for illegal trades in hazardous waste could be a solution. However, this is usually seen as an intrusion on the nation states’ sovereignty. Quite often the responsibility for governing the waste trade is split up between different agencies such as the police, customs and environmental inspectorates or administrations who each have their own priorities, responsibilities and working methods. The transnational nature of the waste trade also brings its own practical and judicial difficulties. Taken together, this carries risks of fragmented approaches (Bisschop, 2015). Investigating waste fraud requires technical expertise, which is often present only with a limited number of people. The prosecution of breaches of hazardous waste regulations remains a national competence with significant differences between countries in approach, number of convictions and imposed sanctions (IMPEL-TFS, 2013). Fines that are imposed for waste fraud are perceived as too low to be effective and become part of shippers’ business plans. Although it is often possible to prove one shipment is illegal, it may be hard to prove this has happened systematically.

The scale of the global waste trade makes it very challenging to rely only on governments to take initiatives in controlling and preventing illegal trade. Preventing environmental harm as a consequence of waste trade could also be a responsibility of corporations and non-government organisations. For instance positive and negative incentives for corporate actors could be designed so that they can get involved in avoiding harm as a consequence of waste fraud. Take the example of e-waste (waste from electric and electronics equipment) where producers, recyclers and consumers could play a role (van Erp and Huisman, 2010). Producers can ensure less harmful recycling by phasing out hazardous components. Consumers could be more aware of unsustainable consumption. The lack of raw materials for instance serves as an incentive for recycling corporations to get involved. Transport actors could also be encouraged to be more transparent, and to avoid their vessel or company names being named in waste fraud. NGOs are crucial in instigating capacity building projects to engage local actors, for instance the informal waste workers in countries of destination who rely on informal waste dismantling activities as a sole source of livelihood (for example, e-waste or ship breaking).

Governance initiatives to improve environmental legislation and implementation are then paired with projects that impact on education, health care and the economy of developing countries in order for them to have the economic, cultural as well as knowledge capital to refuse hazardous waste shipments. However, developing countries also generate their own (hazardous) waste (plastics, obsolete electronics and so on), either in industrial processes or through consumption. The quantities of domestic waste generation might soon exceed those of industrialised countries. Moreover, even if all trade answers to the legal requirements, this does not necessarily mean that the way of least environmental harm was chosen. The challenge of (hazardous) waste governance therefore clearly remains a global one.

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