Enforcers beyond Borders: Transnational NGOs and the Enforcement of International Law

Mette Eilstrup-Sangiovanni and J.C. Sharman

Scholars have studied international NGOs as advocates and service providers, but have neglected their importance in autonomously enforcing international law. We have two basic aims: first to establish the nature and significance of transnational NGO enforcement, and second to explore the factors behind its rise. NGO enforcement comprises a spectrum of practices, from indirect (e.g., monitoring and investigation), to direct enforcement (e.g., prosecution and interdiction). We explain NGO enforcement by an increased demand for the enforcement of international law, and factors that have lowered the cost of supply for non-state enforcement. Increased demand for enforcement reflects the growing gap between the increased legalization of international politics and states' limited enforcement capacity. On the supply side, the diffusion of new technologies and greater access to new legal remedies facilitate increased non-state enforcement. We evidence these claims via case studies from the environmental and anti-corruption sectors.

Enforcement of international laws is conventionally considered the responsibility of the state. Yet NGOs have assumed an important and growing role in various forms of cross-border law enforcement. Their activities range from patrolling, surveillance, and investigation, to confiscation or destruction of illegal equipment and proceeds of crime, and litigation and prosecution before domestic and international courts. Such actions are carried out autonomously, sometimes in parallel with state law enforcement agencies, but often in lieu of state led enforcement, or even in the teeth of state opposition. How should we conceptualize transnational law enforcement by NGOs? What factors prompt such enforcement? What are the broader implications for the international legal order?

A burgeoning literature in International Relations (IR) has focused on how transnational actors use information to raise public awareness and pressure states to change policies, or on how NGOs may be contracted by states to deliver services like education and humanitarian aid, or to monitor compliance with international treaties. More recently, scholars have considered how non-state actors can be "orchestrated" as intermediaries by inter-governmental organizations (IGOs) in pursuit of IGO

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governance goals (e.g., Tallberg 2015; Abbott and Snidal 2009; Abbott, Levi-Faur, and Snidal 2017). Few scholars, however, have considered an *autonomous* role for NGOs in enforcing international laws.[1] We aim to fill this gap in demonstrating how NGOs decentralize and pluralize international law enforcement.

We have two main goals. The first is descriptive and conceptual. We offer a novel understanding of "transnational enforcement" which highlights the role of NGOs as direct contributors to all stages of the global policy cycle: from agenda-setting and policy-formulation, to implementation and enforcement. In doing so, we provide examples evidencing a spectrum of NGO-led enforcement —from indirect to direct—and contrast these to more traditional NGO advocacy roles.

Transnational enforcement is a new concept that describes a mix of relatively long-established forms of NGO behavior, but also some new practices, like interdiction and confiscation of illegal equipment. Many of the tactics that fall toward the indirect end of the enforcement spectrum—such as surveillance and investigation—have long been practiced by NGOs and written about by scholars, especially in the area of human rights. However, their nature and significance have often been mischaracterized as forms of advocacy designed to shame lawbreakers or highlight the plight of victims. We argue for the need to see these established NGO practices in a new way. Autonomous monitoring, investigation, and prosecution by NGOs as part of a strategy to hold violators of international law accountable are better conceptualized as a form of enforcement than as advocacy. Too often, IR scholars have been looking at NGO enforcement without recognizing it as such. A formalistic, state-centric understanding of the concept based on the presumption that an act aimed to compel adherence to the law only counts as enforcement if carried by a state authority, thereby making a tautology of the assumption that states hold a monopoly on law enforcement. By offering a taxonomy of NGO enforcement, we thereby provide a corrective to state-centric views that restrict our understanding of the roles of non-state actors in global governance.

Our second goal is to offer an explanation of the drivers of transnational NGO enforcement. We point to two main factors affecting the demand for and supply of enforcement beyond the state. First, the past few decades have seen a rapid diffusion of laws criminalizing certain transnational activities such as money laundering and trafficking in weapons, people, and endangered species (Simmons, Lloyd, and Stewart 2018, 249; McCormick 2011, 92; Mitchell 2017), which has generated a growing demand for enforcement at both the international and domestic level. Limited state capacity has in turn meant that this demand for enforcement has often gone unfulfilled by governments, especially in areas like the environment and corruption where crimes often cross borders. The resulting deficit of transnational enforcement has created a gap for NGOs to fill.

Second, on the supply side, we show that new surveillance and data-gathering technologies allow NGOs to conduct monitoring and investigation more extensively, effectively, and cheaply than ever before. Furthermore, changes to procedural laws in many jurisdictions have widened non-state actors' access to international and domestic courts. These changes have put new civil and criminal remedies in the hands of transnational activists, leading to an increase in litigation, initially in the realm of human rights (as documented in previous scholarship; see Michel and Sikkink 2013; Dancy and Michel 2016; Gallagher 2017; Michel 2018), but now also in other areas of global governance.

The empirical part of the article charts the operation of transnational enforcement of laws governing international environmental conservation and countering corruption. These cases support our definition of the concept of transnational enforcement, illustrate the spectrum of transnational enforcement activities, and highlight the legal and technological dynamics propelling NGOs into this role. This evidence illustrates both the rise of new enforcement practices and the spread of long-standing practices (such as litigation) from the area of human rights to environmental and anti-corruption policy. In probing the plausibility of our explanatory framework, the paper is an exercise in theory construction rather than systematic theory testing, or in Gerring's terms, exploratory rather than confirmatory research (Gerring 2017, 20; see also Mahoney 2015, 201).

The final section considers the implications of non-state enforcement for the international legal order. The global NGO community has important resources to bring to law enforcement, especially regarding transnational crimes. At the same time, NGO enforcement raises thorny normative questions about legitimacy, due process, and political accountability. In a domestic setting, unauthorized law enforcement by private actors (that is, "vigilantism") is generally shunned. However, the international domain has several features that distinguish it from a domestic environment, including a dearth of stated-led law enforcement, and a general reliance on decentralized rather than centralized enforcement. In this setting, non-state enforcement may present a cost-effective way to address persistent enforcement deficits (Dai 2002; Tallberg 2015).

Our analysis has fundamental implications for the study of global governance. Recognizing the role of NGOs in international enforcement accentuates a more general trend toward the pluralization of what were previously seen as essential state prerogatives (Avant, Finnemore, and Sell 2010; Sending and Neumann 2006; Buthe and Mattli 2011). Just as scholarship on global governance has established the notion that many

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governance functions are supplied by actors other than governments, we argue for the idea of pluralized and decentralized transnational enforcement beyond the state. Our argument thus helps to displace a narrow state-centrism that threatens to restrict and warp our understanding of world politics.

That international rule enforcement is increasingly pluralized beyond the state is not news, as the large literature on private military and security companies attests (Singer 2003; Avant 2005; Krahmann 2010; Abrahamsen and Williams 2011). Aside from the profit motive, however, there are key differences between these private companies and NGO enforcers. The former are contracted by governments or private corporations to provide a specific service, the latter enforce international law in a legal context created by states, but without being seconded or controlled by governments (Brenner 2007). While some IGOs wield their own enforcement powers (e.g., the UN Security Council and International Criminal Court), conceptually and empirically the idea of such "delegated enforcement" by clubs of states is less novel than that of non-state enforcement.

NGOs and Global Governance

Since the 1990s, a growing literature in IR has explored the role of non-governmental actors in global governance. The bulk of this literature examines how NGOs use information to promote new norms and shape international law and policy (inter alia, Keck and Sikkink 1998; Price 2003; Khagram, Riker, and Sikkink 2002; Bob 2005). NGOs contribute to three stages of global policy-making. At the pre-negotiation or agenda-setting stage, NGOs promote new norms, and challenge states to translate these into policies—often via their incorporation into international law (Clark 2001; Finnemore and Sikkink 1998; Keck and Sikkink 1998; Khaghram, Riker, and Sikkink 2002; Tallberg et al. 2018). At the policy-formulation stage, NGOs offer input into international negotiations and provide technical and policy-relevant information to states and IGOs. Once norms are translated into law, NGOs may assist with policy implementation by assuming direct operational functions (for example, delivering education or health care services, or undertaking environmental conservation programs) (Breitmeier and Rittberger 2000, 142-7; Betsill 2014, 196; Gemmill and Bamidele-Izu 2002). Services rendered by NGOs may also include monitoring, analysis, or technical support aimed at increasing the compliance capacity of states. For example, Dai (2002, 405) finds that states often rely on NGOs to monitor environmental regimes. Tallberg (2015) examines how IGOs "orchestrate" NGOs for similar purposes. Finally, NGOs are often seen to encourage compliance through persuasion, or by naming and shaming transgressors (Keck and Sikkink 1998, 17; Price 2003, 595; Hafner-Burton 2008; Murdie and Davis 2012).

Thus as conceived in extant literature, the primary roles of NGOs are to call attention to problems, to instigate new norms, and to put pressure on states to translate these into law. NGOs may assist states in formulating new legislation and in being contracted to provide delegated implementation functions. Yet, ultimately, they defer to states to ensure that international laws are enforced. As Finnemore and Sikkink (1998) argue, transnational actors are "rarely able to 'coerce' agreement to a norm–they must persuade" (see also Khagram, Riker, and Sikkink 2002, 11; Stroup and Wong 2017, 9).

Nonetheless, some NGOs have challenged this prevailing division of labor by taking international law enforcement into their own hands. Unlike NGOs focused on advocacy, NGOs engaged in transnational enforcement do not address global problems by promoting new norms and lobbying for these to be enshrined in international agreements. Nor are they contracted or orchestrated by states to assist in policy implementation. Instead, they seek to compel compliance through calculated and autonomous engagement with formal law enforcement agencies and the legal system. As Wietse van de Werf, founder of the environmental NGO, The Black Fish, puts it: "We have all the laws we need. What we need to do is ensure that they are respected."[2] Paul Watson, founder of the Sea Shepherds' Conservation Society, puts it more bluntly: "States are not enforcing the law, so we have to."[3]

The area of human rights provides something of a bridge between an understanding of NGOs as advocates, and NGOs in an enforcement role. Human rights NGOs are the prototypical advocates (Keck and Sikkink 1998; Sikkink 2011). Yet rather than just campaigning for governments to adhere to international human rights laws, human rights NGOs also collect evidence and carry out investigations, often liaising closely with the police and judiciary (Gonzalez-Ocantos 2014; Gallagher 2017). More than this, scholars have shown how, since the 1970s, especially in a Latin American context, NGOs have undertaken private criminal prosecutions, working either directly or through victim's families (Moyn 2010; Sikkink 2011; Michel and Sikkink 2013; Dancy and Michel 2016; Michel 2018).

As we show in the following sections, similar enforcement tactics have spread to the environmental and anti-corruption spheres, but have also taken on a more transnational cast. Whereas, for example, an Argentine NGO may investigate and prosecute domestic human rights abuses in a national court, the enforcement actions discussed in the case studies to follow are much more likely to be in response to cross-border crimes. This is because either the enforcers are international NGOs, or because jurisdiction is unclear (as on the high

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seas), or because the crime itself crosses borders (e.g., money corruptly taken from country A is laundered in country B). Thus although NGOs enforcing domestic human rights are bolstering international law, sometimes acting through international courts, environmental and anti-corruption NGO enforcers more clearly epitomize the transnational, global governance aspect of this role.

The categories of transnational activism identified here —advocacy and enforcement—are not mutually exclusive. Many NGOs that undertake transnational enforcement also engage in advocacy, provide technical assistance to states, etc. Nevertheless, there is an important analytical distinction between these roles.

Conceptualizing Transnational Enforcement

In this section, we distinguish different NGO enforcement strategies. Some of these strategies are new, others are relatively routine. Our argument is that these old and new practices should be understood as jointly constituting a new and discrete concept of NGO enforcement.

Law enforcement can be defined as action(s) aimed at *compelling* (rather than encouraging or facilitating) compliance with the law. Among lawyers and policing experts, it is generally understood to involve *detection*, *investigation, arrest, indictment, prosecution, conviction and punishment of persons that violate the law* (Akella and Canon 2004, 4-5; Yang 2006, 1134-5; Interpol 2019). These activities are traditionally carried out by police, public prosecutors, and other state-mandated law enforcement authorities (Michel 2018; Edmonds and Jugnarain 2016). As we shall see, however, NGOs increasingly contribute to all elements of this enforcement chain—internationally and domestically —with or without direct consent of states.[4]

As this definition indicates, there are different elements of enforcement, including detection, investigation, arrest, prosecution, and conviction. It is rare for one type of enforcer to perform them all. As exemplary enforcers, police do detective and investigative work and make arrests, but generally do not prosecute, and cannot convict. Prosecutors prosecute, and may investigate, but do not arrest or convict. Different NGO enforcers perform different elements of enforcement, but as with police, prosecutors, and judges, no NGO does them all.

Enforcement includes both criminal and civil law actions. The idea that civil litigation by private parties constitutes law enforcement is routine and explicit in domestic legislation, and in some international treaties. Examples include Titles III of the Americans with Disabilities Act, Title III of the Helms-Burton Act (Cuban sanctions), and Articles 101 and 102 the Treaty on the Functioning of the European Union on anti-trust law (Hampton 2005; Clagett 1996; Wils 2017). This fact is a commonplace for regulatory and legal scholars (Ayres and Braithwaite 1991; Burbank, Farhang, and Kritzer 2013; Fine 2017; Buxbaum 2019). Historically, law enforcement by private parties has been the rule rather than the exception (Doak 2008; Michel 2018). Recently, scholars have documented a sharp increase in climate litigation cases brought by NGOs against governments and corporations on the basis of both public, civil, and international law (Harrison 2014; Edmonds and Jugnarain 2016; Ryngaert 2016; Gwynn 2019).[5]

Though we are primarily interested in NGOs enforcing international law, particular opportunities to do so often arise in national courts. Many scholars have noted a growing tendency of international law to be enforced in domestic courts, especially in the area of human rights (Michel and Sikkink 2013, 876; Dancy and Michel 2016, 173; Gallagher 2017, 1667; Gonzalez-Ocantos 2014, 481; Michel 2018, 9), but also in other areas (Efrat and Newman 2019; Quintanilla and Whytock 2012). We refer to such instances as *transnational litigation*—that is, a legal process before a domestic court involving a foreign element and brought by a non-governmental actor (as opposed to a statutory prosecuting authority). The legal process may be civil or criminal, and the foreign element may involve the litigant or defender being foreign, or the application of international law in a domestic setting (Quintanilla and Whytock 2012).

Rather than discussing the enforcement of norms, informal rules, or soft law—areas where the absence of legal obligation implies that enforcement also tends to be based on "soft" means such as persuasion or shaming—we concentrate on hard law. This provides the clearest test of our argument that NGOs have taken on more active enforcement duties, even in the domain where states' monopoly on enforcement has been presumed to be most robust. Some of the NGO enforcement activities we discuss may themselves be of uncertain legality, perhaps tipping over into vigilantism, a point we return to in the conclusion. Finally, enforcement is a means to the end of compliance, not an equivalent concept. Not all measures that boost compliance comprise enforcement (on compliance, see Raustiala and Slaughter 2002; Hillebrecht 2009; Simmons 2010; von Stein 2010; Martin 2012).

The Enforcement Spectrum: Indirect and Direct Action

NGO enforcement activities fall on a spectrum from indirect action, focused on monitoring, surveillance and investigation, to direct action, including civil litigation, criminal prosecution, and interdiction.

NGOs whose work falls in the first category often take the initiative in gathering evidence, investigating crimes, and acting as expert witnesses at court (Nurse 2013). Two aspects distinguish the surveillance and investigation carried out by these groups from the standard (delegated) monitoring services which have been the focus of much extant scholarship (e.g., Raustiala 1997; Gemmil and Bamidele-Izu 2002; Tallberg et al. 2014; Tallberg

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2015). First, it is carried out autonomously of particular governments, even if it ultimately relies on state-created law and courts. Even where NGO enforcement activities may align with state preferences, the latter do not cause or explain the former. Equally, it is important not to equate the state as an institutional ensemble including the whole judicial apparatus with particular governments (Gonzalez-Ocantos 2014, 480; Dancy and Michel 2016, 175). An independent court system exists in many countries precisely to hold governments to account for their compliance with and adequate enforcement of national and international law.

Second, rather than monitoring overall compliance, this form of autonomous surveillance and investigation is directly aimed at specific violators, designed to ensure that they are subject to formal legal penalties. This is a crucial distinction. Investigation conducted with the aim of gathering evidence that can lead to trial and form the basis of legal judgement constitutes a crucial dimension of the judicial process (Gallagher 2017). Contrary to the spontaneous or delegated monitoring carried out by many advocacy NGOs, the activities of enforcement NGOs thus comprise independent and unsolicited efforts to expose and penalize international crime (Brenner 2007, 59-60)—a fact IR scholarship has not yet properly appreciated.

Direct enforcement may entail NGOs taking direct preventive or punitive actions against law-breakers. Groups such as The Sea Shepherds Conservation Society and The Black Fish have confiscated or sabotaged equipment used for illegal fishing, and have instituted maritime blockades against vessels engaged in illegal fishing, while Greenpeace infamously boarded the cargo ship *APL Jade*, suspected of hauling contraband mahogany from Brazil.[6]

Direct enforcement by NGOs may also include civil or criminal litigation. As discussed, international NGOs often initiate legal proceedings where statutory agencies fail to prosecute crimes (Agarval 2008, 933; Rothwell 2013). In France, anti-corruption NGOs have taken advantage of legislation prompted by the UN Convention Against Corruption giving them legal standing to initiate criminal corruption prosecutions.[7] Based on international law against corruption and money laundering, other groups like *Asociación Pro Derechos Humanos de Espana* in Spain, TRIAL in Switzerland, and Corner House in Britain have done the same (Moerloose 2016). Environmental NGOs have sued companies and governments before domestic courts for offences derived from international law, such as illegal whaling (*Humane Society International v Kyodo,* Australia 2008) and contributions to global warming (*Greenpeace* and *Nature and Youth* v. *Norway* 2017, and *Urgenda v. Kingdom of the Netherlands* 2015) (Rothwell 2013; Ryngaert, 2013; Edmonds and Jungnarain 2016). Again, such direct and autonomous enforcement stands in contrast to NGOs as delegated monitors, or as advocates that seek to lobby or shame government into exercising state investigative and coercive powers.

One might object that our distinction between indirect and direct enforcement is insufficiently sharp to serve as a useful taxonomy. Many direct enforcement actions have indirect effects in the form of "demonstration effects" or, as we show in the cases, by provoking government action. Yet the distinguishing feature of a direct enforcement action as we conceive it is that—even if states choose not react at all—it still has an effect (in halting or interrupting a specific crime, or triggering judicial review). Indirect actions by contrast depend on further government action to have any effect at all (Eilstrup-Sangiovanni and Phelps Bondaroff 2014).

Explaining the Rise of NGO Enforcement

While they are not always new, transnational law enforcement practices are spreading. Before the 1970s in the environmental sphere (Eilstrup-Sangiovanni 2019), and before the 1990s when it comes to anti-corruption, there was little enforcement of international law, because there were few if any international laws governing these areas. As such, transnational enforcement in both policy domains is by definition relatively recent. Even in the human rights scholarship referenced earlier, private prosecutions mainly date from the 1980s onward.

The expansion in transnational law enforcement activity is explained by changes in both demand and supply factors. On the demand side, a rapid proliferation of international laws without a corresponding increase in state enforcement capacities has produced a growing "enforcement gap" to be filled by NGOs (Nurse 2013). On the supply side, technological and legal advances have reduced costs for NGOs to supply transnational enforcement. As Büthe has pointed out (2012, 38), and as our case studies demonstrate, the changes effected by these demand- and supply-side factors reflect inherently political strategies and choices by NGOs that seek to take advantage of new legal and technological opportunity structures to advance their aims, rather than impersonal market forces. Nor do we hold any presumption of equilibrium as the natural outcome; even with increasing enforcement efforts by NGOs, the enforcement gap looks unlikely to be eliminated any time soon.

The Demand Side: Expansion of International Law

The past few decades have witnessed a rapid proliferation of international laws criminalizing certain transnational activities, from money laundering, corruption, and insider trading to trafficking in weapons, drugs and endangered wildlife (Abbott and Snidal 2009; Betts 2013, 69; Simmons, Lloyd, and Stewart 2018, 249; Alter and Raustiala 2018). However, enforcement remains

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limited (Interpol 2019). Implementation of international laws is often entrusted to IGOs that lack jurisdiction to enforce treaties without assistance from party states (Ardia 1998, 511). On the other hand, national enforcement agencies are generally confined to operating within a particular jurisdiction and may lack financial and technical capacity (or inclination) to enforce laws outside national borders. The gap between formal commitments (and public expectations) of a law-based global system and state enforcement capacities is thus widening.

The Supply Side: Technological and Legal Advances

Organizational innovation is often fueled by advances in technology. In recent decades, the growing sophistication and declining costs of remote-sensing technologies such as Global Positioning Systems (GPS) and Geographic Information Systems (GIS), and new aerial surveillance tools such as drones, have enabled NGOs to contribute more directly to law enforcement. For example, low-cost unattended ground sensor systems and drones have permitted small and resource-poor NGOs to reveal illegal poaching activities on land and at sea. Similarly, anti-corruption activists in Russia have used drones to investigate and film mansions and estates owned by politicians accused of corruption.[8] As we show in the case studies, some NGOs like ShadowView and Skytruth now focus exclusively on making high-tech remote sensing technologies as well as satellite and aerial images available to other NGOs for surveillance purposes.[9]

Anti-corruption investigations have also been greatly assisted by a range of online tools, starting with simple Google searches on individuals and companies. Screen-scraping software can harvest vast amounts of financial data from the web for sifting and analysis. The NGO Open Corporates has scraped, organized, and made public data on over 100 million companies drawn from dozens of corporate registries around the world.[10] In analyzing this material to mount investigations, NGOs routinely use the same sort of case organization, network analysis, and forensic accounting software used by law enforcement agencies, which can be bought off the shelf, often quite cheaply.[11]

A second development facilitating NGO enforcement are legal advances expanding the rights and opportunities for NGOs to engage in private prosecution, or more generally as formal participants in civil court actions. International treaties such as the Aarhus and Alpine Conventions widen the scope for NGO participation in legal proceedings regarding environmental harms. While some countries have granted private prosecution rights for centuries (see Dancy and Michel 2016), changes to procedural laws in many countries have widened such rights by extending *locus standi* to NGOs to sue on behalf of underrepresented third-parties, or to defend the interest of the public as a whole (*actio popularis*) (Rebasti and Vierucchi 2002; Edmonds and Jugnarian 2016; Stephenson 2016).[12] For example, recent case law has confirmed private prosecution rights for European NGOs in environmental matters (e.g., *Trianel (C-115/09,* European Court Reports 2011 I-03673). Scholars also note a growing trend towards international tribunals addressing questions of a collective or public nature, including infringement of environmental laws. Alter has noted the creation of almost twenty new international courts from the end of the Cold War, distinguished by the opportunities they provide for non-state actors to initiate enforcement actions (Alter 2011, 389, 392; Alter 2014, 66; also Rebasti and Vierucchi 2002; Harrison 2014). Tallberg et al. (2014) argue for a similar expansion in the political opportunity structure, as IGOs have become more willing to open up to and make common cause with NGOs (see also Green 2010; Johnson 2016). Scholars thereby single out enforcement as an area of growing opportunities for involvement by non-state actors, though their understanding of enforcement is mainly associated with delegated or orchestrated monitoring (Tallberg et al. 2014; Tallberg 2015, 171).

Cases and Expectations

This section illustrates our argument with evidence from the environmental protection and anti-corruption sectors. We focus on these sectors for two reasons. First, unlike human rights where international legal frameworks have a longer pedigree, both areas have seen a recent expansion of international laws and governance procedures, which, combined with limited state enforcement, has produced an enforcement gap. Both areas are also characterized by the recent introduction of specific legal and technological tools which facilitate independent NGO enforcement. This allows us to carefully observe the relationship between changing demand and supply factors and growing transnational enforcement. Second, a focus on transnational anti-corruption and environmental enforcement allows us to expand on earlier coverage of enforcement actions by human rights groups in showcasing the full range of NGO enforcement activities—from indirect to direct enforcement, from monitoring and surveillance to interdiction and litigation—in new policy domains and on a wider transnational basis.

We first establish the changing contextual factors giving rise to increasing NGO enforcement in each area, before illustrating and substantiating the range of NGO enforcement measures in line with our descriptive and conceptual aims. The cases thus both serve as a plausibility probe of our causal argument regarding changing demand and supply factors, while also demonstrating the merit of the concept of transnational enforcement as a new phenomenon worthy of study (Gerring 2017, 20; Mahoney 2015, 201). Both cases show clear variation across time, reflecting the relationship between a proliferation of international laws, increased opportunities for enforcement beyond the state, and the associated rise of NGO enforcement.

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Environmental Enforcement

Growing Legalization

Environmental law is among the fastest growing areas of international law.[13] Since the 1972 Stockholm Conference on the Environment, world leaders have signed more than 1,300 international agreements governing areas such as biodiversity, atmospheric pollutants, chemicals, illegal fishing, desertification, destruction of tropical forests, marine plastics pollution, endangered species, hazardous substances and waste, toxic dumping, and many more (Tseming and Percival 2009; Mitchell 2017). Yet despite a proliferation of environmental laws, detection and punishment of environmental crimes remain low, as states often lack the capacity and will to enforce laws against crimes crossing national jurisdictions (Akella and Crawford 2012, 6-7; Interpol 2019). Thus, global environmental governance has become simultaneously highly legalized and poorly enforced.

Technological and Legal Advances

As demand for environmental law enforcement has increased, technological advances have reduced the costs to NGOs of monitoring, investigating, and disrupting environmental crimes. Commercially available drones, GPS, and other remote sensing technologies enable environmental NGOs to extend monitoring and surveillance across vast areas. Cheap cell phone-enabled camera traps and unattended ground sensor systems allow rangers to collect reliable evidence of wildlife poaching, illegal logging, and other criminal activities (see Eilstrup-Sangiovanni 2019). While advanced monitoring technologies like satellite, radar, and surveillance aircraft have traditionally been the preserve of militaries and governments, declining costs means these technologies are now widely available to NGOs.[14]

Technological innovation has been accompanied by legal changes allowing environmental NGOs to gain the status of injured parties before international and national courts. In a European context, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), which came into force in 2001, obliges national courts to grant legal standing to NGOs to challenge new legislation or projects likely to harm the environment. The legal standing of NGOs was confirmed in a landmark ruling in May 2011 by the European Court of Justice *(Trianel C-115/09)*. Many European states (e.g., France, Portugal, Italy, and the UK) grant environmental NGOs direct access to civil courts, along with the right to intervene in national criminal proceedings, and to claim compensation for environmental damage on behalf of affected citizens or the general public (de Sadeleer, Roller, and Dross 2002). Such legislative changes—combined with an increase in environmental courts and tribunals worldwide (Preston 2016)—have expanded opportunities for NGOs to prosecute environmental crimes (Harrison 2014; also Eilstrup-Sangiovanni 2019).

Indirect and Direct Enforcement

Beyond substantiating our key expectation that changing demand and supply factors lead to growing NGO enforcement, the examples of transnational environmental enforcement that we present cover a wide spectrum—from surveillance and investigation through to litigation and direct interventions against environmental crime.

There is abundant evidence that environmental NGOs increasingly tap into new information and communication technologies to expand independent monitoring. For example, drones have been widely used by NGOs such as SeaScope, SoarOcean, International Wildlife Crime-Stoppers, and Blue Seals to reveal poaching activities on land and at sea. The Flying for Wildlife Trust carries out aerial monitoring of elephants in Zimbabwe to expose poaching, while the tiny NGO SkyTruth has used satellite imagery to document oil-spills in places like East Timor (2009) and Kuwait (2017) and bilge dumping off the coast of Fujairah in the United Arab Emirates (2017). In 2014 SoarOcean launched Global Fishing Watch, a sophisticated monitoring network that uses satellite tracking to detect when and where commercial fishing is happening in every ocean around the world in real time with the goal of facilitating more effective intervention against illegal fisheries (see Eilstrup-Sangiovanni 2019). While these groups all supply evidence to government authorities to facilitate arrests and prosecution, their monitoring activities are self-directed and autonomous, funded by charitable donations rather than by governments or IGOs, and explicitly designed to gather evidence of criminal conduct that can be used to build case files.

An example of a group specializing in indirect enforcement through independent investigation is the Environmental Justice Foundation (EJF), a UK-based NGO founded in 2001 that works internationally to expose illegal fishing and human rights abuses. Among recent projects, the group has investigated exploitation of workers in the cotton industry in Uzbekistan, and illegal exploitation of mangrove forests in Brazil. In 2012, the EJF launched the Fisheries Information Network (FIN) across West Africa. Using remote sensing technologies, FIN collects data and evidence on suspected illegal fishing and issues alerts to coastal, flag, and port states. According to EJF's website,[15] evidence gathered through FIN has prompted arrests and millions of dollars of fines levied against pirate fishing vessels by the governments of North Korea and Sierra Leone, and by EU authorities. Another group with a similar profile is Eco-Activists for Governance and Law Enforcement (EAGLE), which carries out investigations and assists governments with arrest operations and litigation in order to "generate a strong deterrent against the illegal trade in wildlife, timber and related criminal activities."[16]

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Further examples of NGOs whose work falls at the indirect end of the enforcement spectrum include the Environmental Investigation Agency (EIA), which specializes in undercover investigations of environmental crime,[17] and the Wildlife Justice Commission (WJC) whose mission is "to disrupt transnational organized wildlife crime by exposing criminal networks . . . and by empowering—or, if need be, pressuring—governments to enforce their laws."[18] Similar to TRAFFIC,[19] the WJC and EIA both supply data and evidence to wildlife and customs enforcement agencies, including Interpol and the World Customs Organization. Unlike TRAFFIC, however, neither NGO has been delegated specific monitoring responsibilities by IGOs or governments. Furthermore, both groups pursue an explicit strategy of pressuring reluctant governments to enforce the law. In July 2016 after Vietnamese authorities failed to act on a 5,500-page case file submitted by the WJC containing evidence regarding Chinese and Malay wildlife traffickers operating in Vietnam, the WJC convened a public hearing in The Hague. Over the course of two days, the WJC presented evidence to a Designated Independent Review Panel composed of international law experts, which issued a set of recommendations to Vietnamese authorities.[20] By forcing the issue onto the global stage, the WJC compelled the Vietnamese government to take action, leading to a string of arrests and prosecutions, which upended nine major trafficking networks involved in the supply of ivory, rhino horn, and tigers.[21]

Like NGOs fighting corruption, environmental NGOs increasingly use litigation as an enforcement tool. In 1991 Greenpeace activists blocked the outflow pipe of the Albright & Wilson plant in Cumbria, England, following months of research which established that the outflow from the pipe was in violation of the 1989 Water Act.[22] Based on evidence gathered, Greenpeace launched a successful private prosecution against Albright &Wilson under the Water Act of 1989 for discharging excessive amounts of heavy metal into the Irish Sea (Edmonds and Jugnarain 2016). In 2008, Humane Society International brought a lawsuit against a Japanese whaling company before an Australian court for killing whales within Australia's Antarctic whale sanctuary in contempt of a 2008 injunction.[23] In 2017 the NGO Oil Spills Victims Vanguard filed a civil suit in the High Court in London against Shell Nigeria Exploration and Production Company on behalf of the victims of a 2011 oil spill in Nigeria's Niger Delta region.

Civil litigation is not merely directed against corporations. In 2016, Greenpeace and the NGO Nature and Youth sued the Norwegian government for contributions to climate-change. The lawsuit was facilitated by a recent change in the Norwegian Constitution, which makes preserving a healthy and diverse environment a legal obligation for the government.[24] However, the case rested not on local harms from fossil-fuel extraction, but on the contribution any oil extracted would make to global warming which the Paris Agreement of 2015 obliges governments to reduce (Grantham Institute, 2019). In 2015, *Stichting Urgenda v. The State of the Netherlands*, an injunctive relief was sought obliging the Dutch state to reduce its per capita greenhouse gas emissions, which the plaintiff argued was among the highest in the world. The Hague District Court accepted jurisdiction and gave standing to the Urgenda Foundation on grounds that its by-laws stated it represented global interests (Gwynn 2018, 17). Though the case turned on whether the state had breached its duty of care under the Dutch civil code, the court invoked international instruments, ruling that the 1992 UNFCCC, EU legislation, and the ECHR had a "reflex effect" upon the duty of care of the Dutch civil code (ibid.). On this basis the Court ordered the Dutch state to institute more aggressive limits on the volume of greenhouse gas emissions by 2020 (ibid.).[25]

These are just a handful among hundreds of examples of how environmental NGOs are increasingly taking to the courts—using domestic courts to enforce compliance with international laws, and strategically selecting jurisdictions in order to exploit differences in national courts' openness to private litigation (Ryngaert 2013; Harrison 2014; Sjåfjell and Halvorssen 2015).

Further along the enforcement spectrum, the Sea Shepherds Conservation Society (SSCS) provides a leading example of an NGO favoring a *direct* enforcement approach. Headquartered in Amsterdam, the SSCS operates a fleet of ten ships that navigate the world's oceans to combat illegal fishing.[26] Unlike many NGOs, the SSCS defines its mission exclusively as international law enforcement. "We're not a protest organization, we're a policing organization," says SSCS founder Paul Watson.[27] The group is notorious for its confrontational actions that have included ramming and scuttling whaling ships, physically intervening in seal hunting, and seizing and destroying illegal drift-nets at sea (Eilstrup-Sangiovanni and Phelps-Bondaroff 2014).

Despite its extreme tactics, the SSCS takes care in navigating the uncertain line between vigilantism and law enforcement, carefully selecting targets where legally binding conservation measures are in place that states are unable or unwilling to enforce (Eilstrup-Sangiovanni and Phelps-Bondaroff 2014). In 2011, during NATO's bombing campaign in Libya, the EU ruled that none of its members could fish in Libyan waters as there was no way to check licenses and enforce quotas in a war zone. In June 2011, the SSCS dispatched two ships to patrol the coastal waters of Libya, their crew fitted with bullet-proof vests, in order to prevent unregistered tuna-fishing boats from taking advantage of the absence of official inspections.[28] "We will be armed with the regulations and in touch with NATO and the EU Commission if we encounter any

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suspicious activity," said SSCS president Paul Watson (Neville 2011). In a similar operation in 2010, the group deployed five divers to cut the nets towed by the *Cesare Rustico*—an Italian vessel hauling two cages of Bluefin tuna caught in Libyan waters—thereby releasing 800 tons of illegally fished tuna back into the Mediterranean Sea. Despite not being officially sanctioned to carry out inspections, the SSCS vehemently deny charges of vigilantism. "We do have authority", insists SSCS Captain Hammarsted. "We have the right to intervene in accordance with the UN's World Charter for Nature that allows for NGOs to intervene to uphold international conservation law and specifically in areas beyond national jurisdiction" (quoted in Neville 2011).

Another striking example of direct enforcement is the SSCS's interception of the Nigerian-flagged ship, *Thunder,* in 2015. The *Thunder,* a Norwegian-built trawler owned by Panamanian shell company, had been wanted by Interpol since 2013 for illegal toothfish fishing, yet no government had taken steps to apprehend it. The SSCS spent more than $1.5 million over three months in chasing the fugitive vessel, before finally prompting the captain to scuttle the ship at sea to conceal its crimes (Milman 2015). As the ship sank, the SSCS crew boarded it and seized evidence of its unlawful activities (including the captain's logbook, cell phones and computers, and a 200-pound toothfish). Next, they escorted the captain and crew to shore where they were detained until placed under arrest by Interpol. The evidence submitted by the SSCS to Interpol led to conviction of the captain and two senior crew members on charges of illegal fishing.[29]

The SSCS is not alone in taking a direct approach to environmental law enforcement. The Black Fish, founded in 2010, has used drones to pinpoint the location of illegal drift-nets which the group has subsequently confiscated and destroyed. Similar to SSCC, the group has also used divers to release illegally caught bluefin tuna from cages at a fish farm in Croatia. "We don't see ourselves as witnesses, more as enforcers of law. We want evidence of illegality and we are prepared to take direct action," says founder of The Black Fish, Wietse van de Werf.[30]

Like the SSCS, The Black Fish systematically targets problems defined by an enforcement gap. Thus in recent years, the group has focused on confiscating driftnets and illegal Fish Aggregation Devices off the Coast of Sicily, where they say enforcement has been particularly low due to the Italian coastguard "being stretched with the migrant issue."[31]

Direct enforcement is carried out autonomously of states, but it often has states as a main target audience. Along with many other groups engaged in direct enforcement, The Black Fish articulates a clear strategy of seeking to pressure states to improve law enforcement by challenging their enforcement authority monopoly. As van de Werf explains:

> We feel . . . the moment we have a vessel out there collecting driftnets from the ocean, as soon as we get into any confrontation with illegal driftnets vessels, the coast guard or the Navy will come out and then it's going to be interesting because they are actually supposed to do the work we're doing there. So, I think what we're trying to do is to really provoke a reaction from the authorities by starting the work for them.[32]

Thus it is crucial to appreciate that rather than being some abstract, analytical classification, these NGOs understand themselves as non-state enforcers, and explicitly claim this mantle.

Anti-Corruption Enforcement

Growing Legalization and the Enforcement Gap

International anti-corruption treaties and conventions have proliferated since the mid-1990s, including the Inter-American Convention against Corruption (1996), the OECD Anti-Bribery Convention (1997), the Council of Europe Convention on Corruption (1999), and high-profile anti-corruption commitments from many other inter-governmental organizations (McCoy and Heckel 2001; Abbott and Snidal 2002; Fisman and Golden 2017). Increasing international legalization was capped by the 2005 United Nations Convention Against Corruption. This trend entailed a corresponding increase in domestic anti-corruption legislation, as international commitments were written into national law. Corruption, particularly as committed by senior state officials, is now seen as an inherently transnational problem, in that bribes and stolen money tend to cross borders, rather than being simply an internal law enforcement problem (Stolen Asset Recovery Initiative 2010, 2014).

Despite the proliferation of anti-corruption law, effectiveness is widely regarded as very low, even among law enforcement agencies and anti-corruption NGOs (Sharman 2017). Transparency International-UK has endorsed earlier UN findings that only around 1% of illicit funds are detected, and an even smaller proportion is actually confiscated (Transparency International-UK 2015, 6). This effectiveness gap reflects enduring challenges: international corruption cases are slow and legally complex, given the need to reconcile different jurisdictions' legal traditions and procedures in international cases, and often involve delicate diplomatic questions (Stolen Asset Recovery Initiative 2010, 2014). Hence the global governance of corruption has become simultaneously highly legalized and poorly enforced.

Technological and Legal Advances

As increased legalization and conspicuous shortcomings in states' anti-corruption efforts have accentuated the demand for enforcement, technological and legal advances have reduced the cost of supply for non-state actors. The 1990s saw the privatization of financial surveillance, as

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banks were made responsible for anti-money laundering monitoring, and later for countering the financing of terrorism and enforcing targeted financial sanctions (Zarate 2013). This stimulated the development of a financial compliance industry, and accompanying software (Tsingou 2019). The steadily falling price of computing power and the proliferation of free or cheap analytical software means that even small NGOs can utilize this technology to access vast amounts of newly available information. This includes information from corporate and property registries made freely available online by governments in searchable format, together with vast leaks of hitherto secret financial data in the Panama and Paradise papers (Obermayer and Obermaier 2016). In combination, these developments mean that a single individual now probably has more financial investigative capacity than the best-resourced law enforcement agency in the mid-1990s, when international laws against corruption were first passed.

Innovations in civil and criminal law have complimented these technological advances in favoring non-state enforcement at the international and domestic level. Private parties can increasingly use civil law remedies to forcibly obtain evidence, freeze funds, and confiscate assets, including those in foreign jurisdictions (Thelesklaf and Pereira 2011). For example, new "Anton Piller" court orders authorize plaintiffs to search defendants' residences and places of business unannounced for evidence (commonly financial records), with refusal treated as contempt of court. Similarly, "Mareva" injunctions allow plaintiffs, and even those who are not party to the original case, to freeze defendants' bank accounts and other assets pending resolution of the case, sometimes with world-wide effect (Daniel and Maton 2008; Oliver 2011). In the United States, the Racketeering Influenced and Corrupt Organizations (RICO) law passed in 1970 to fight the Mafia is now overwhelmingly used by private parties, including NGOs, to restrain and seize the assets of other private parties using either criminal or civil law remedies.[33] As discussed later, recent legislative changes, often stimulated by new international law like the UN Conventions against Transnational Organized Crime (2003) and Corruption (2005), also give or expand the right of non-state actors to bring private criminal prosecutions, including for corruption-related offences (Messick 2016; Edmonds and Jugnarain 2016; Stephenson 2016). The actions of states and IGOs have created political opportunities and spaces for NGO action, but the NGO actions themselves are autonomous, rather than being directed, contracted, or orchestrated by particular governments.

Indirect and Direct Enforcement

Having established the presence of the demand and supply conditions associated with growing transnational enforcement of international anti-corruption laws, it now remains to evidence the results by surveying the range of autonomous NGO enforcement. This extends from monitoring and investigation, through to civil litigation and criminal prosecution.

Global Witness has been perhaps the most successful investigative group. It has specialized in corruption in the resource extraction sector, where it has used a combination of open source material, illegal leaks, undercover investigative work, and sting operations to build highly detailed accounts of individual corruption offences. For example, a 2009 report accused leaders from Equatorial Guinea, Congo, Gabon, Liberia, Angola, and Turkmenistan of specific corruption offences. It also named banks including Citibank, Deutsche, Barclays, and HSBC as laundering the proceeds. The report even published individual bank account details, the credit card statements of the son of the Congolese president, and a copy of the Barclays Bank check used by Obiang of Equatorial Guinea to buy one of his many Ferraris (Global Witness 2009, 44). Global Witness has since published the results of much other detective work.[34] Though Global Witness has accepted funds from various state development agencies, its investigations are conducted independently of governments and law enforcement agencies; its findings are usually highly critical of state authorities for the inadequate enforcement of their international anti-corruption and anti-money laundering commitments.

The Sentry, founded and in part funded by George Clooney, specializes in the link between corruption and war crimes in East Africa. It describes its mission as "creating a significant financial cost to . . . kleptocrats through network sanctions, anti-money laundering measures, prosecutions, and other tools."[35] A 2016 project on corruption among the leaders of South Sudan saw investigative teams dispatched to Australia, Egypt, Ethiopia, Kenya, South Sudan, and Uganda to interview witnesses. The resulting report accused specific individuals of major corruption offences, and traced the contracts, bank transfers, and property records to follow the money trail, with many of the key primary documents reproduced in the report (Sentry 2016). Once again, rather than being contracted, enlisted, or somehow orchestrated by a state or IGO, this investigation took place in an environment of official indifference or hostility. The Sentry's UK office is led by the former head of the British National Crime Agency's Overseas Corruption Unit, indicating the level of investigative expertise even small NGOs can secure.

While Global Witness has focused mainly on investigative work, the campaign against Teodorin Obiang, vice president and heir apparent of Equatorial Guinea, showcases a broader range of NGO enforcement action, from investigation to prosecution. Obiang was convicted in French court in October 2017 of embezzlement and

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money laundering, while he faces another NGO-led prosecution in Spain.[36] The case began in March 2007 when the *Comité Catholique contra Faim et pour le Dévelopment* published a report on the stolen wealth of past and current dictators stashed in the West. Working from the findings of this report and led by Sherpa (a group of lawyers working pro bono against corruption and for development), three French NGOs lodged criminal complaints against the presidents of Gabon, Congo, and Equatorial Guinea and their families for laundering the proceeds of corruption in France. Despite an initial French police investigation supporting these allegations, French prosecutors dropped the case in November 2007 (Perdriel-Vaissiere 2011, 2017).

In July 2008, Transparency International France joined Sherpa in re-filing the criminal complaint. Reflecting hostility to unauthorized enforcement, the French prosecutors fought Transparency International France and Sherpa in the courts and the press to throw out the criminal complaints, only to lose in late 2010, at which time criminal action against Obiang commenced (Perdriel-Vaissiere 2011, 2017). The French government subsequently legislated in December 2013 to allow NGOs to bring criminal corruption and money laundering charges directly to the courts, thus removing the need to re-fight this legal battle in other cases, and precipitating subsequent additional prosecutions by Sherpa and another new NGO, Anticor.[37]

Direct criminal action by anti-corruption NGOs is not limited to France. Spanish criminal law provides wide latitude for NGOs to bring criminal prosecutions.[38] *Asociación Pro Derechos Humanos de Espana* (APDHE) brought money laundering cases against Obiang and several other officials in October 2008. The first arrests of this case were made in 2015. Significantly, both the French and Spanish NGOs were supported in their enforcement actions by the Open Society Foundations from New York (funded by George Soros), in part explaining how such small NGOs could undertake complex legal actions for over a decade.[39]

A further example of transnational enforcement working directly through the courts is the British NGO Corner House, specializing in corruption in the arms trade. Corner House challenged the decision to stop a corruption investigation against British arms company, BAE systems, in connection with a massive arms deal with Saudi Arabia. The UK Serious Fraud Office had dropped the investigation under heavy pressure from the Blair government (Gilbert and Sharman 2016). Corner House moved in court to force the government to reinstate the investigation. Memorably dismissed by one government official as a "hopeless challenge brought by a bunch of tree-hugging hippies," Corner House severely embarrassed the government by obtaining a decision in their favor (Sharman 2017, 195). Subsequently, Corner House has mounted other legal challenges attempting to freeze alleged corruption proceeds in Britain.[40]

Conclusions

NGOs play a variety of different roles in global politics, increasingly including autonomous transnational law enforcement. This shift has been facilitated by recent technological developments and legal changes. In some cases, NGO enforcement activities aim at independently reinforcing state-led enforcement by providing evidence and mounting complimentary investigations. In other cases, they occur in lieu of state enforcement. Here we consider some pros and cons of NGO enforcement, and then examine the broader implications for world politics.

NGO enforcement carries a range of potential benefits. It multiplies the resources devoted to investigating and prosecuting international crime, and shifts costs from governments to the non-profit sector (see Bayley and Shearing 2001 and Ayling 2013 on benefits of private policing). Unlike official monitoring and verification systems, which have to monitor compliance with treaties universally, NGOs can focus their enforcement efforts on specific areas and countries of concern (Meier and Tenner 2001). NGOs can also bring valuable expertise and capacity to law enforcement. They are often highly motivated and knowledgeable, willing to devote time and resources to issues that state actors are unwilling or unable to pursue (Tallberg 2015, 166-67). When NGOs are independently funded, they are also subject to fewer domestic political pressures than governments, and may therefore be more aggressive and consistent enforcers of international norms and standards (Ardia 1998, 560-2). Finally, from a wider societal perspective, NGO enforcement can potentially serve as a check on unresponsive states (Dancy and Michel 2016). Arguably, then, NGO enforcement secures widely valued global goods that would otherwise be in short supply.

Yet the picture is not exclusively positive. A major concern regarding "vigilante" justice is whether due process is followed to protect innocent parties from being falsely accused and punished. NGOs may be less impartial than state officials. Whereas public enforcement authorities must provide the full range of police services, NGOs are free to decide which issues to focus on and which cases to litigate, and they will often make their selection strategically with a view to wider societal impact (Michel 2018), potentially leading to selective and biased enforcement practices. NGO enforcement may also raise issues of professionalism. For example, the SSCS has frequently been accused of breaching safety-at-sea regulations during its self-styled enforcement actions.[41] Scholars studying policing in a domestic setting have worried that use of private policing companies may serve to weaken executive and legislative oversight of policing, thereby reducing democratic legitimacy and accountability (Bayley and

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Shearing 2001; Ayling 2013). A similar concern arises in regard to transnational enforcement where reliance on NGO enforcement may mean that attributing blame for enforcement shortfalls becomes harder.

Many of these concerns recall the oft-heard criticism that NGOs are "partial, unrepresentative and unaccountable." Yet, as Price (2003, 591) argues, "the criticism that civil society activists are unrepresentative deflects hard questions away from the legitimacy of existing political institutions . . . when it is the very unresponsiveness of such institutions that creates the conditions for transnational civil society activism in the first place." In the case of transnational enforcement, the objection of lacking representativeness may be even less persuasive. Even in countries with relatively little corruption, state enforcement is often highly selective and politicized. Transnational versus state-led enforcement seems to be less a question of who gets to "define the public interest," than a case of NGOs defending public interests as defined by states where states and IGOs fail to do so effectively.

This defense of NGO enforcement, however, also highlights a downside, namely that growing transnational enforcement may simply lead governments to "pass the buck" to NGOs in shirking their enforcement responsibilities (Dai 2002, 416). If so, the net effect of NGO actions to enforce international law might be zero or even negative. When asked whether he worries that by supplying enforcement where states fail their duties, NGOs effectively reduce incentives for states to enforce, van de Werf answers, "We are effectively doing their job for them. It's not ideal but the issue is urgent."[42]

Some may object that the examples cited in our cases amount to little more than anecdotal evidence of a growing range and incidence of transnational enforcement. We dispute this. Though not coining these activities as enforcement, recent literature in both IR and International Law provides plenty of evidence of an increase in NGO litigation and other forms of enforcement. While clearly enabled by technological and legal changes, this increase in transnational enforcement may be partly due to an increase in the number of international NGOs. However, our argument is that autonomous NGO enforcement is not merely a quantitative change, a matter of more non-state agents contracted by state principals. Rather, NGO enforcement is qualitatively different from that practiced by for-profit corporate enforcers, or NGOs that carry out monitoring on behalf of states or IGOs. NGO enforcers interact with states neither as principals, nor as targets for advocacy, being more self-directed than these models of NGO-state interaction generally allow.

From the perspective of International Relations scholars, the degree to which international rules can be enforced in an anarchical system is perhaps *the* fundamental question. So far, however, we have missed the significance of transnational enforcement, because we have lacked the right conceptualization to recognize it as such. Even in a context where the participation of NGOs in global governance is now widely accepted, lingering state-centrism means that scholars have been slow to appreciate NGOs' roles in the pluralization and decentralization of international enforcement. Our contribution here is thus both conceptual as well as empirical in highlighting this important but so far neglected aspect of contemporary global governance. Finally, our argument opens up new avenues for research into how legal and technological opportunity structures affect the behavior of NGOs.

Notes

1 Exceptions include Moffa 2012; Eilstrup-Sangiovanni and Phelps-Bondaroff 2014.
2 Interview with author, London, June 15, 2016.
3 Quoted in Hoek 2010, 177.
4 Insofar as litigation, prosecution, and conviction rely on courts, NGO enforcement depends on the state's legal apparatus as we discuss further later. Yet insofar as courts are generally independent of governments, NGO enforcement does not depend on direct state involvement or consent.
5 In some jurisdictions, like the United States, there is a sharp separation between civil (tort) law and criminal law. A tort is a civil wrong, where the individual damages or losses suffered due to a crime are separated from the harm caused to society in general, but many other domestic and international jurisdictions allow legal action brought in defence of a collective or "general interest" (*actio popularis*).
6 www.nytimes.com/2003/10/11/us/typical-greenpeace-protest-leads-to-an-unusual-prosecution.html.
7 Law of December 6, 2013; Perdriel-Vaissiere 2017, 10.
8 For the results, see https://www.youtube.com/watch?v=3eO8ZHfV4fk.
9 http://skytruth.org/issues/oceans/#sthash.Kxqo8L-DO.dpuf; http://soarocean.org/project-details.
10 https://old.datahub.io/dataset/opencorporates.
11 Author interview, The Sentry, Brisbane Australia, October 27, 2016; Global Witness, Exeter, UK, September 18, 2015.
12 An example of accommodating legislation is the Polish Environmental Protection Act, according to which NGOs may file an action in cases of threat to or damage to the environment as the "common good"; ibid.
13 http://guides.ll.georgetown.edu/InternationalEnvironmentalLaw.
14 http://soarocean.org/why-drones/.
15 https://ejfoundation.org; retrieved December 2018.
16 http://www.eagleenforcement.org/crisis; retrieved May 20, 2019.

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17 https://eia-international.org/about-eia/; Retrieved Nay 20, 2019.
18 https://wildlifejustice.org/about-us/; retrieved December 2018.
19 A decision by the Parties to the Convention on Biological Diversity and CITES has entrusted TRAFFIC (an initiative governed by The World Wildlife Fund and the International Union for Conservation of Nature) to undertake certain inspections within the territory of Treaty Parties in cooperation with the Secretariat of CITES.
20 https://wildlifejustice.org/about-us/.
21 https://wildlifejustice.org/about-us/ and *National Geographic*; https://www.nationalgeographic.com/animals/2018/07/wildlife-watch-news-captive-tiger-farms-trafficking-investigation-vietnam-laos/.
22 Business Library. 1991. "Greenpeace Wins Pollution Case." September 16. http://findarticles.com/p/articles/mi_hb5255/is_n18/ai_n28606353/; retrieved April 11, 2012).
23 https://www.theguardian.com/environment/2015/nov/18/australian-court-fines-japanese-whaling-company-1m-for-intentional-breaches.
24 Article 112 of the Norwegian Constitution: https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf. The Oslo District Court ruled in favor of the Norwegian Government on January 4, 2018. Greenpeace has appealed the decision.
25 https://www.urgenda.nl/en/home-en/
26 http://www.smh.com.au/national/how-sea-shepherd-stays-afloat-20120110-1ptu6.html.
27 http://www.seashepherd.org/who-we-are/mandate.html.
28 http://news.discovery.com/earth/protecting-tuna-from-libya-war-110519.htm.
29 https://www.interpol.int/News-and-media/News/2015/N2015-160; and http://www.scoop.co.nz/stories/HL1503/S00046/interpol-takes-custody-of-evidence-from-sea-shepherd.htm. Interpol declined to publicly acknowledge assistance or receipt of evidence from SSCS. However, Interpol representatives unofficially applauded the operation. "They're getting results" an Interpol official (speaking anonymously) said; Urbina 2015; interview with the author, Oxford, January 2016.
30 Author interview, London, June 2016; Vidal 2012.
31 Author interview, June 15, 2016.
32 http://www.monbiot.com.
33 *Economist*. 2015. "Taking the Gangster Rap." August 6.
34 https://www.globalwitness.org/en-gb/.
35 https://thesentry.org/about/.
36 https://globalanticorruptionblog.com/2017/10/30/french-court-convicts-equatorial-guinean-vice-president-teodorin-obiang-for-laundering-grand-corruption-proceeds/.
37 Author interview, Paris, 2017.
38 Sanz and Sese 2013.
39 Author interviews, OSF, New York, February 2015, April 2017; Paris, sherpa, April 2017.
40 http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Press%20Release%207%20Nov%202014_1.pdf.
41 It is important to note that NGOs enjoy none of the immunities enjoyed by public police. Thus, Greenpeace faced criminal prosecution for boarding and boat-jacking the *APL Jade*, which it falsely believed carried contraband Brazilian mahogany.
42 Author interview, London, June 2016.

Supplementary Materials

To view supplementary material for this article, please visit https://doi.org/10.1017/S153759271900344X
Data and Coding Criteria

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