



## CHAPTER TWELVE

### TRANSGOVERNMENTAL NETWORKS

#### INTRODUCTION

This chapter presents a selection of the best literature on transgovernmental networks, an increasingly important part of modern global governance, and one that plays an important role in making law work for sustainable development. What are “transgovernmental networks” and how can they play a role in strengthening enforcement and compliance for sustainable development?

The lack of meaningful enforcement and compliance has often been seen as one of the greatest weaknesses of international law, and international environmental law in particular, but new models of cooperation present great promise for effective international action. The common conception of international governance, and global environmental governance in particular, is one of multilateral treaties and organizations negotiated by diplomats representing sovereign States. These treaties and organizations, described in the previous chapters, are often criticized by some as a threat to national sovereignty, secretive, and remote. Others criticize them as being ineffective at mitigating the environmental problems they were designed to address.

A different view of global governance has emerged amid these criticisms. Global governance, under this view, is not, or at least not solely, to be found in these treaties and organizations, but rather in complex global webs of “transgovernmental networks.”

“Network” is a broad term that can be applied to many forms of cooperation. For example, the United Nations could be viewed as a network of governments across the globe. But in the context of global governance and the articles in this chapter, a “network” is a form of cooperation involving governments or government officials (and under some conceptions, NGOs and the business community as well) that operates without a formal treaty or international institution. In particular,



this chapter focuses on what are often referred to as “transgovernmental networks,” which involve the component institutions of states — such as legislators, regulators, and enforcement and compliance officials — interacting directly with their peers around the world.

Networks arise with different origins and purposes. Networks range from informal bilateral and multilateral networks to more institutionalized organizations such as the Basel Committee on banking. They are located within existing international organizations, are created by agreements, or spontaneously arise through regular contact. They can also involve somewhat surprising participants. For instance, judges are starting to network more, whether by means of information-sharing and mutual citation, or actively by means of forming organizations and cooperating on transnational litigation. As a recent example of this growing community of courts, UNEP and INECE, among others, organized a Global Judges Symposium at the UN Conference on Sustainable Development at Johannesburg in 2002, bringing together judges from around the world to review their role and the rule of law in the context of sustainable development.<sup>1</sup>

Networks can be more flexible, and thus potentially more effective, than the large formal institutions of international governance when it comes to certain functions. By working directly peer-to-peer, transgovernmental networks can quickly disseminate and distill information, enhance enforcement cooperation, harmonize laws and regulations, and address common problems from a shared perspective shaped by experience and expertise.

Enforcement networks in particular offer the potential to fill the compliance gap that many view as having hobbled international environmental law. Enforcement networks exist to enhance cooperation among national regulators to enforce national laws. These networks occur most intensively but not exclusively within the law enforcement community (e.g., police, customs agents, drug agents). Interpol, the international police network, facilitates information exchange and provides assistance to local police efforts.<sup>2</sup> Interpol has also created an

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<sup>1</sup> See ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 14, 66 (2004). See also *Johannesburg Principles on the Role of Law and Sustainable Development*, adopted at the Global Judges Symposium held in Johannesburg, South Africa, on 18-20 August 2002, available at [http://www.inece.org/wssd\\_principles.html](http://www.inece.org/wssd_principles.html).

<sup>2</sup> SLAUGHTER, *Supra* note 1, at 55-56.



environmental crime network, called Ecomessage, to facilitate information-sharing and enhanced coordination of enforcement efforts.<sup>3</sup> Another important environmental enforcement network is the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), an informal network of the environmental authorities of the EU Member States, acceding and candidate countries of the EU, and Norway.<sup>4</sup>

Capacity building is a critical function of enforcement networks. A new Green Customs network, intended to build the capacity of customs officials, has been created and is supported by Interpol, the World Customs Organization, the Convention on International Trade in Endangered Species, the Basel Convention, and UNEP.<sup>5</sup> The U.S. Environmental Protection Agency offers courses to train regulators and environmental officials in other countries because building regulatory capacity in nations with weak or poorly developed legal systems allows cooperative enforcement efforts to occur. Their efforts stem “from the recognition that a global regulatory system based on transgovernmental networks is only as strong as its weakest link.”<sup>6</sup>

This chapter presents a series of articles that explain the growth of networks, the types of networks that exist, the role that networks do and can play, and the implications of networks for global governance, national sovereignty, and the existing infrastructure of international organizations and treaties.

The chapter starts with an excerpt from Anne-Marie Slaughter’s book, *A New World Order*,<sup>7</sup> which argues that transgovernmental networks — including INECE — are all around us but are underappreciated and underused to address the global problems facing the world today. She argues that the state is not being made obsolete, but rather is disaggregating into its component parts, and that the networking of these disaggregated government parts can be seen as retaining “sovereignty” and can resolve the global governance “tri-lemma” of needing global rules without centralized power but with political accountability.

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<sup>3</sup> “Ecomessage: Reporting System for Environmental Crime” packet. Interpol & IFAW.

<sup>4</sup> See IMPEL Homepage at <http://europa.eu.int/comm/environment/impel>.

<sup>5</sup> See Green Customs Homepage at <http://www.uneptie.org/ozonaction/customs/home.htm>.

<sup>6</sup> SLAUGHTER, *supra* note 1, at 57.

<sup>7</sup> *Id.*, Introduction.



Kal Raustiala's article examines transgovernmental networks and their impact on the existing international infrastructure of "liberal internationalism."<sup>8</sup> Raustiala asserts that rather than replacing the existing array of treaties and organizations, transgovernmental networks will operate synergistically with the existing governance structure by making the treaties and organizations work better, by filling gaps where treaties are politically or economically precluded, and by smoothing the path for future negotiations. Raustiala also explores the implications of transgovernmental networks for the theories of international compliance discussed earlier in Chapter Two: Compliance Theories.

Peter Haas's article on "epistemic communities," a concept that could include some transgovernmental networks, highlights the implications of such communities for international policy coordination, particularly their ability in the face of ever-present uncertainty to provide expert opinions, narrow down policy choices, and help define state self-interests.<sup>9</sup>

Lastly, Donald Kaniaru's article examines more closely the role of institutions and networks in environmental enforcement, focusing on examples such as INECE and the role played by the UNEP Guidelines on MEAs.<sup>10</sup>

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<sup>8</sup> Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1 (2002).

<sup>9</sup> Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46(1) INT'L ORG. 1(1992).

<sup>10</sup> Donald Kaniaru, *The Role of Institutions and Networks in Environmental Enforcement*, 6<sup>th</sup> INECE Conference Proceedings, Vol. 2 (2002), available at <http://www.inece.org>.