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The Power and Legitimacy of Government Networks

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Global governance is here, but it is more than most people think it is. It is governance through a collection of nation states that communicate via presidents, prime ministers, foreign ministers, and the United Nations. Non-governmental organizations (NGOs) and corporations also participate in various ways. But a core part of the infrastructure of global governance – typically overlooked or ignored – is a complex global web of ‘government networks’.

The European Union has pioneered this new form of ‘transgovernmental’ governance, creating networks of ministers, judges, and legislators to govern the EU polity and economy. On the global stage, however, it is the United States that has more frequently advocated regulation of areas such as competition policy or the securities industry through networks of national officials rather than through more traditional forms of international organization. Europeans may simply not recognize what they have created, or they may mistrust its wider application without the deeper treaty-based commitments that bind EU members. Alternatively, many EU citizens may be far more inclined to see the flaws in their own institutions – the widely proclaimed ‘democracy deficit’ – than the virtues.

Regardless, governance by government network has gone global. Government networks are often still fledgling in many areas. They span the globe or particular regions of the globe, but do not include all countries. Their effectiveness is more asserted than demonstrated; their legitimacy is often questioned. Their potential uses have only begun to be exploited. But they are a powerful tool for addressing global problems without the political or logistical nightmares of global government.

What are government networks?

Government networks are networks of national government officials who come together on a regular basis to exchange information, coordinate activity, and adopt policies to address common problems on a global scale. In the global economy, networks of finance

ministers and central bankers have been critical players in responding to national and regional financial crises. The G-8 is as much a network of finance ministers as of heads of state; it is the finance ministers who take key decisions on how to respond to calls for debt relief for the most highly indebted countries. The finance ministers and central bankers hold separate news conferences to announce policy responses to crises such as the East Asian financial crisis in 1997 and the Russian crisis in 1998. The G-20, a network specifically created to help prevent future crises, is composed of the finance ministers of 20 developed and developing countries. More broadly, the International Organization of Securities Commissions (IOSCO), emerged in 1984. It was followed in the 1990s by the creation of the International Association of Insurance Supervisors and a network of national and international officials responsible for financial stability around the world called the Financial Stability Forum.

Government networks have also been at the forefront of efforts to assure global security. In the wake of September 11th, public attention has focused primarily on the military campaigns initiated by the US in a self-proclaimed war on terrorism, but networks of financial regulators working to identify and freeze terrorist assets, of law enforcement officials sharing vital information on terrorist suspects, and of intelligence operatives working to preempt the next attack have been equally important. Indeed, the leading expert in the 'new security' of borders and container bombs (Stephen Flynn) insists that the domestic agencies responsible for customs, food safety, and regulation of all kinds must extend their reach abroad through reorganization and much closer cooperation with their foreign counterparts. And after the US concluded that it did not have authority under international law to interdict a shipment of missiles from North Korea to Yemen, it turned to national law enforcement authorities to coordinate the extraterritorial enforcement of their national criminal laws.

Beyond economic and security affairs, networks of national officials are working to improve environmental policy across borders. Within the North American Free Trade Agreement (NAFTA), US, Mexican, and Canadian environmental agencies have created an environmental enforcement network which has enhanced the effectiveness of environmental regulation in all three states, particularly in Mexico. Globally, the Environmental Protection Agency (EPA) and its Dutch equivalent have founded the International Network for Environmental Compliance and Enforcement, which offers technical assistance to environmental agencies around the world, holds global

conferences for environmental regulators to learn and exchange information, and sponsors a website with training videos and other information.

These networks are most concentrated among regulators, but government officials from other branches of national governments are also joining in. National judges are exchanging decisions with one another through conferences, judicial organizations, and the internet. Constitutional judges increasingly cite one another's decisions on issues from free speech to privacy rights. Bankruptcy judges in different countries negotiate mini-treaties to resolve complicated international cases; judges in transnational commercial disputes have begun to see themselves as part of a global judicial system. National judges are also interacting directly with their supranational counterparts on trade and human rights issues.

Finally, even legislators, the most naturally parochial government officials due to their direct ties to territorially rooted constituents, are reaching across borders. International parliamentary organizations have been traditionally well meaning but ineffective. But today national parliamentarians are meeting to adopt and publicize common positions on the death penalty, human rights, and environmental issues. They support one another in legislative initiatives and offer training programs and technical assistance.

All these networks are 'horizontal' in the sense that they link national government officials across national borders. But increasingly close ties also exist between supranational officials – judges, regulators, legislators – and their domestic government counterparts. These are vertical government networks. Whereas the traditional model of international law and international courts assumed that a tribunal such as the International Court of Justice (ICJ) in the Hague would hand down a judgment applicable to 'states', and up to 'states' to enforce or ignore, the EU legal system devolves primary responsibility for enforcing European Court of Justice (ECJ) judgments not onto EU 'member states', per se, but on the national judges of those states. Another version of a vertical judicial network, operating on a global scale, is the jurisdictional provisions of the statute establishing an International Criminal Court (ICC). Under this system, national courts exercise primary jurisdiction over cases involving genocide, war crimes and crimes against humanity, but must cede power to the ICC if they prove unable or unwilling to carry out a particular prosecution. Beyond judges, the EU is also pioneering a vertical administrative network between the antitrust authority of the European

Commission and national antitrust regulators that will allow the Commission to charge national authorities with implementing EU rules in accordance with their particular national traditions.

These vertical networks are enforcement networks. But they can also operate as harmonization networks by bringing national rules and supranational rules closer together. Still other vertical networks are principally information networks. The environmental ministers of the NAFTA countries, for instance, benefit by working with the Commission on Environmental Cooperation (CEC), a NAFTA supranational institution charged with gathering information on environmental enforcement policies and compiling an informational record of complaints of non-enforcement by private actors. This is an attempt to enhance enforcement through the provision of information. Similarly, the EU is beginning to create Europe-level 'information agencies', designed to collect and disseminate information needed by networks of national regulators. Such agencies can also provide benchmarks of progress for their national counterparts against agreed global or regional standards.

Are they effective?

It is one thing to identify the existence of government networks; it is another to demonstrate their actual contribution to the ill-defined but essential business of global governance. What do these networks actually do? Can they actually change outcomes? Solve disputes? Facilitate cooperation? Identify and implement solutions to common problems?

There is no single answer to these questions. Each of these networks has specific aims and activities depending on its subject area, membership, and history. Legions of studies and dissertations will be required to examine the impact of specific government networks of specific types of government officials (regulators, judges or legislators) on specific problems or governance issues. Yet it is possible to identify different types and modes of activity and common functions.

Government networks expand regulatory reach, allowing national government officials to keep up with corporations, civic organizations, and criminals. They build trust and establish relationships among their participants that then create incentives to establish a good reputation and avoid a bad one. These are the conditions essential for long-term cooperation. They exchange regular information about their own activities and develop

databases of best practices, or, in the judicial case, different approaches to common legal issues. They offer technical assistance and professional socialization to members from less developed nations – whether regulators, judges or legislators.

Government networks lead to the ‘regulatory export’ (Kal Raustiala) of rules and practices from one country to another. The result can be sufficient policy convergence to make it possible over the longer term to conclude a more formal international agreement setting forth a common regulatory regime. Soft law codes of conduct issued by transgovernmental regulatory organizations, as well as the simple dissemination of credible and authoritative information also promotes convergence. Promoting convergence, however, can also give rise to informed divergence, where a national governmental institution or the government as a whole acknowledges a prevailing standard or trend and deliberately chooses to diverge from it for reasons of national history, culture or politics.

Government networks also improve compliance with international treaties and customary law. Vertical enforcement networks do this explicitly and directly by providing a supranational court or regulatory authority with a direct link to a national government institution that can exercise actual coercive authority on its behalf. Equally important, however, are the ways in which technical assistance flowing through horizontal networks can build regulatory or judicial capacity in states where the spirit is willing to enforce international legal obligations but the infrastructure is weak.

Finally, government networks can enhance existing international cooperation by providing the mechanisms for transferring regulatory approaches that are proving increasingly successful domestically to the international arena. Most important is regulation by information, which allows regulators to move away from traditional command and control methods and instead provide individuals and corporations with the information and ideas they need to figure out how to improve their own performance against benchmarked standards. This approach is gaining popularity in the US, is increasingly prevalent in the EU, and is being tried at the UN. Government networks create regional and even global transmission belts for information that can readily expand to include as many nations as can usefully participate. Moreover, government networks are the ideal mechanism of international cooperation on international problems that have domestic roots, as they directly engage the participation and the credibility of the individuals who must ultimately be responsible for addressing those problems.

These different functions can be independently assessed and evaluated in terms of their contributions to specific outcomes. What we find may tell us as much about the nature of contemporary problems and the changing organization of society in many parts of the world as it will about government networks. The extraordinary complexity and uncertainty of many of the problems we face, combined with possibilities for rapid regional and even global communications, may mean that the things networks are good at – exchanging information, collective brainstorming, experimentation in different contexts – is exactly what is needed. That does not mean that government networks are effective at addressing global problems of all kinds at all times. It is far more likely that they will often be most effective when combined with more traditional types of international and national institutions. But we should ultimately be able to make far more nuanced judgments about what institutional mechanisms are most effective for addressing what kinds of problems.

Are they legitimate?

The legitimacy of government networks is deeply intertwined with the question of effectiveness. First, the more effective these networks are at delivering satisfactory outcomes to the greatest number of people, the more legitimate they are (outcome legitimacy). However, dissatisfied customers will raise issues of accountability and transparency (process legitimacy). Indeed, such concerns are already on the table.

Some observers see government networks as promoting global technocracy – secret governance by un-elected regulators and judges. Others fear that the informality and flexibility of networks is a deliberate device to end-run the formal constraints imposed on global governance by traditional international organizations with representation rules, voting rules, and elaborate negotiating procedures. Without these constraints, critics charge, powerful nations run roughshod over weaker ones. Still others worry more that weak nations will be excluded altogether from powerful government networks. At the domestic level, critics charge harmonization networks with distorting domestic political processes and judicial networks with polluting or diluting national legal traditions. Still others picture government networks as vehicles for special interests – shadowy decision-making fora to which only those who are ‘connected’ or ‘in the know’ have access.

In response to these criticisms, I propose a set of potential solutions:

- 1) Recognize all government officials as performing both a domestic and an international function. Such recognition would mean that national constituents would automatically hold them accountable for their activities both within and across borders.
- 2) Make government networks as visible as possible. Creating a common website and linking the individual websites of participants in a government network will have the paradoxical effect of making a government network real by making it virtual.
- 3) Increase the number and activities of legislative networks, both to monitor the activity of regulatory networks and to launch initiatives of their own.
- 4) Use government networks as the spine of broader policy networks including international organizations, NGOs, corporations, and other interested actors, thereby guaranteeing wider participation in government network activities but also retaining an accountable core of government officials.
- 5) Promote a menu of domestic political measures designed to enhance the accountability of government networks, depending on the extent to which a particular polity perceives a problem and what it decides to do about it.

Harnessing the potential of government networks

In addition to such measures, the ultimate legitimacy of government networks is likely to depend far less on their present incarnation than on the ways in which the hypothetical architects of world order (in reality, a vast complex of politicians, experts, lobbyists, scholars, and activists) choose to design and use them. We have only begun to tap the potential uses of government networks. New uses, of course, are likely to generate new problems. Nevertheless, if these networks are to be a significant component of the infrastructure of global governance, we must be imaginative about what they could do.

For instance, we could harness the capacity of government networks for self-regulation, drawing on the examples of private commercial networks which succeed in enforcing 'network norms' against cheating or other undesirable behavior. If government networks existed not only to address specific regulatory, judicial and legislative problems but also as self-consciously constituted professional associations of regulators, judges,

and legislators, they should be able to develop and enforce global standards of honesty, integrity, competence, and independence in performing the various functions that constitute a government.

Government networks could socialize their members in a variety of ways that would create a perceived cost in deviating from these standards. But they could also bolster their members by enhancing the prestige of membership in a particular government network enough to give government officials who want to adhere to high professional standards ammunition against countervailing domestic forces. Just as international organizations from the EU to the Community of Democracies have done, government networks could condition admission on meeting specified criteria designed to reinforce network norms. A particular advantage of selective strengthening of individual government institutions this way is that it avoids the pernicious problem of labeling an entire state as bad or good, liberal or illiberal, tyrannical or democratic. It focuses instead on performance at a much more micro-level, recognizing that in any country and in any government different forces will be contending for power and privilege. It is critical to support those who are willing to practice what they preach in both their own laws and their obligations under international law.

At the same time, these networks could be empowered to provide much more technical assistance of the kind needed to build governance capacity in many countries around the world. They could be tasked with everything from developing codes of conduct to tackling specific policy problems. They could be designated interlocutors for the multitudes of non-governmental actors who must be engaged in global governance as they are in domestic governance. Vertical government networks could similarly be designed to implement international rules and strengthen domestic institutions in any number of ways. How well will they do? We cannot know until we try.

Finally, self-consciously constituted government networks could acknowledge the power of discussion and argument in helping to generate high-quality solutions to complex problems. For certain types of problems, vigorous discussion and debate is likely to produce the most creative and legitimate alternatives. In addition, government networks constituted this way could harness the positive power of conflict as the foundation of lasting political and social relationships. This understanding of conflict is familiar within democratic societies; it is only within the world of diplomacy, where conflict can escalate to fatal dimensions that conflict per se is a danger if not an evil.

Among disaggregated government institutions, national and supranational, conflict should be resolved, but not necessarily avoided. It is likely to be the long-term engine of trust.

Robert Keohane has argued that globalization creates potential gains from cooperation if institutions can be created to harness those gains. However, as he points out, institutions themselves are potentially oppressive and tyrannical. The challenge facing political scientists and policymakers at the dawn of the 21st century is to discover how well-structured institutions 'could enable the world to have a "new birth of freedom"' (Keohane). In this context, a world order based on government networks, working alongside and even in place of more traditional international institutions, holds great potential. It is up to us to ensure both effectiveness and legitimacy.

For more detail, see: Anne-Marie Slaughter, A New World Order (Princeton University Press, 2004).

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