

Legitimacy and accountability of transgovernmental networks

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The bodies described in this chapter have been analysed in legal and political science as transgovernmental networks. Anne-Marie Slaughter, in *A New World Order*, published in 2004, argued that the world was increasingly governed by networks of national officials, regulators, judges and legislators who cooperate across borders without the mediation of traditional diplomacy. She used the Basel Committee and the other financial regulatory networks as her central examples.¹ For Slaughter, such networks were effective because they brought together experts who shared a professional culture and could reach agreement quickly. She also recognised that they raised problems of accountability, since national officials acting in networks were not subject to the same controls as diplomats concluding treaties.

Chris Brummer, in *Soft Law and the Global Financial System*, examined why the non-binding standards of these bodies are nevertheless widely followed. His answer pointed to a combination of reputational mechanisms, market discipline and institutional pressure: jurisdictions that do not follow the standards face criticism in peer reviews and IMF assessments, higher funding costs and exclusion from cooperation.² The FSB's monitoring of implementation, its peer reviews and its reports to the G20 can be read as an attempt to harden soft law through transparency. Other authors have analysed the Basel Committee and its sister bodies from the perspective of global administrative law and have asked whether principles such as transparency, participation, reasoned decision-making and review should apply to them.³

Critics have raised several objections. The first concerns membership. Although the FSB and the Basel Committee expanded their membership after 2009 to include the G20 economies, most countries of the world remain outside them and must adopt standards they did not help to draft.

The IAIS and IADI, with their broad memberships, are less exposed to this objection. A second objection concerns the influence of the financial industry, which has the resources to participate intensively in consultations and to lobby national members. A third objection concerns democratic control. Standards adopted in Basel are implemented by national legislators who often have little room for manoeuvre, since departing from an international standard carries reputational costs and invites criticism from peers.⁴

The bodies have responded to these criticisms in different ways. Most now consult the public on draft standards and publish the comments they receive. The FSB publishes its work programme, reports regularly to the G20 and has created the Regional Consultative Groups to involve non-members. Its chairs appear before parliamentary committees in their home jurisdictions, and some national parliaments have established procedures for discussing international standards before they are implemented. In Switzerland, the State Secretariat for International Finance coordinates Swiss participation in these bodies, while Parliament debates the resulting legislation in the ordinary way.⁵ The debate about Basel III's final reforms in the United States after 2023, where opposition from the industry and from members of Congress led to the withdrawal and revision of the proposal, shows that national political processes retain their capacity to resist standards agreed in Basel.

From a lawyer's perspective, the most interesting feature of these bodies is the way in which they combine private-law form with public function. The FSB, the IAIS and IADI are associations under the Swiss Civil Code, yet their members are public authorities and their standards shape public law in many countries. This hybrid form gives them flexibility and protects them from the rigidity of treaty organisations. It also means that the traditional instruments of public law, from judicial review to parliamentary control, do not reach them directly. Accountability is thus mediated through the national members, who answer to their own legislatures and courts. Whether this mediated accountability is sufficient is a question on which reasonable observers disagree. It is unlikely to be settled while the bodies continue to produce standards of such practical importance.

1 Notes

1. Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2004), especially chapters 1 and 2 on regulatory networks. To be verified. ↩

2. Chris Brummer, *Soft Law and the Global Financial System: Rule Making in the 21st Century* (Cambridge University Press, 2012; 2nd ed. 2015). To be verified. ↩
3. Michael S. Barr and Geoffrey P. Miller, "Global Administrative Law: The View from Basel", *European Journal of International Law* 17 (2006), 15–46; Benedict Kingsbury, Nico Krisch and Richard B. Stewart, "The Emergence of Global Administrative Law", *Law and Contemporary Problems* 68 (2005), 15–61. To be verified. ↩
4. See, for example, Eric Helleiner, *The Status Quo Crisis: Global Financial Governance after the 2008 Meltdown* (Oxford University Press, 2014); Daniel K. Tarullo, *Banking on Basel: The Future of International Financial Regulation* (Peterson Institute, 2008). To be verified. ↩
5. On Swiss coordination of participation in international financial bodies, see State Secretariat for International Finance (SIF), annual reports and the Federal Council's reports on financial market policy. To be verified. ↩

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