

TRANSNATIONAL REGULATION & “NETWORK EFFECTS”

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Recent decades have seen a rapid expansion in direct, routinized purposive interaction between public officials from government agencies of different countries that share a common sphere of authority and expertise (such as competition, securities, public health, security and policing, fisheries or the environment), a phenomenon that I shall refer to in this paper as “transnational regulatory networks”. Cooperation of this kind has facilitated cross-border investigations and law enforcement; policy development and standard setting; as well as capacity building and information sharing. They are networks in the sense that this type of cooperation is based on relatively loosely structured, horizontal ties developed over time through repeat interaction amongst multiple players rather than via centrally coordinated *ex ante* agreement. As such, this cooperation is most commonly structured – when it is formally structured at all – by informal or non-legally binding agreements (e.g. MOUs), and involves regular peer-to-peer cooperation between participating agencies that is based on trust and is not directly controlled by the head of the executive or the foreign ministry of respective governments.

Thus defined, the concept of transnational regulatory networks describes a broad range of contemporary cooperation occurring at an international level across multiple fields of regulation. In the first section of this paper, a number of general features of such transnational regulatory networks will be identified. Looking for law at the transnational level we often find institutions engaged in norm producing practices, rather than conventional models of legal unity, hierarchy, rule of law, separation of powers, and constitutional order. This transnational legal pluralism thus raises difficult questions about when social practices *become* law. More generally, it highlights the crucial significance that social conventions and routinized practice have in the context of the late modern legal order. An infrastructure of implicit social rules has evolved in the shadow of the official legal order and which – it will be suggested – has become indispensable for the continued existence of the legal system as a whole.

The second section of the paper will provide a concrete example of such a network, namely the development of a global network of securities regulators, and examine some of the “network effects” that may arise as a result of the proliferation of this kind of global regulation.

More specifically, the paper will focus on (1) The increasing importance of the International Organization of Securities Commissions (IOSCO) as the primary institutional mechanism for promoting cooperation between securities regulators; (2) the emergence of the IOSCO *Objectives & Principles of Securities Regulation*; and (3) the adoption of the IOSCO principles by the World Bank and IMF as the “global standard” for evaluating performance in the field of securities in the highly influential IMF-World Bank Reports on the Observance of Standards and Codes (ROSCs).

The paper will argue that the concept of “network effects” (taken from institutional economics) can provide some important clues for understanding how transnational regulatory networks develop over time. Transnational regulatory networks provide a

degree of regulatory security under conditions of normative and cognitive uncertainty. By adopting particular standards - with standards understood in the broadest sense as encompassing understandings, practices, rules, policies, enforcement practices – “networked regulators” are able to maximize the effective reach of their own regulatory efforts. Given the existence of a global regulatory network, regulatory convergence increases the number of jurisdictions with which a state can usefully cooperate. Over time, network theory suggests that equilibrium will emerge in which one regulatory standard starts to dominate. Network effects thus contribute to policy standardization. As networks connect up with one another – the emerging network of networks in the field of global securities, for example – this tendency is further reinforced.

This is not to suggest that convergence is “caused” by network effects or that it is inevitable, but rather that network effects create strong incentives for key stakeholders within the network and in related networks to converge – i.e. to agree on the rules of the game - and that these incentives are likely to be stronger in situations where there is a high degree of structural inequality and cognitive uncertainty.