1 Introduction

I. Introduction

This book discusses the rise of international economic crime and recent U.S. and international strategies to combat such crime. It is organized into three main sections. The first discusses substantive crimes, particularly tax, money laundering and counterterrorism financial enforcement, transnational corruption, transnational organized crime, and export control and economic sanctions. The second part discusses procedural aspects of international white collar crime, namely extraterritorial jurisdiction, evidence gathering, extradition, and international prisoner transfer. The third part discusses the role of international organizations, including the United Nations, the World Bank Group, INTERPOL, and economic integration groups.

Although there is no recognized category of "business crimes" or white collar crimes,[1] this book includes within substantive white collar crimes those mentioned earlier. The term "white collar crime" was coined by Edwin Sutherland in a speech to the American Sociological Society in 1939. Subsequently, he stated that it "may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation."[2] Thereafter, a variety of definitions have been applied to white collar crime.[3]

[1] Ellen S. Podgor & Roger S. Clark, Understanding International Criminal Law 37 (2d ed. 2008).
[2] Ellen S. Podgor, *Globalization and the Federal Prosecution of White Collar Crime*, 34 Am. Crim. L. Rev. 325, 327 (2007), citing Edwin H. Sutherland, White Collar Crime: The Uncut Version 7 (1983).
[3] Podgor, *id.*, citing David T. Johnson & Richard A. Leo, *The Yale White-Collar Crime Project: A Review and Critique*, 18 Law & Soc. Inquiry 63 (1993) (reviewing various definitions of white collar crime); Jerold H. Israel, Ellen S. Podgor, & Paul D. Borman, White Collar Crime: Law and Practice 1–11 (1996) (same).

II. Environment Giving Rise to International Economic Crimes

Contemporary transnational criminals take advantage of globalization, trade liberalization, and emerging technologies to commit a diverse range of crimes and to move money, goods, services, and people instantaneously for purposes of pure economic gain, political violence, or both.[4] A key component facilitating international white collar or economic crime is trade liberalization, especially free trade agreements (FTAs). The problem is that the leadership of trade liberalization or FTAs and the politics (surrounding them,) do not allow negotiators to provide for comprehensive enforcement mechanisms. The politics of FTAs make ratification difficult, especially if costly regulatory or enforcement mechanisms are added since they are perceived politically as underserving sovereignty. Instead, such comprehensive enforcement mechanisms are completely omitted, or else only isolated criminal subjects are treated.

For instance, in the North American Free Trade Agreement (NAFTA) there is a large section on intellectual property (IP) enforcement and only several provisions on customs cooperation and enforcement. Customs enforcement is a subject that FTAs normally cover. However, the extensive coverage of IP enforcement reflects the strong influence intellectual property groups in the United States. As a result of failing to include comprehensive enforcement provisions in FTAs, individual criminals and criminal organizations are able to take advantage of FTAs to conduct their criminal activities. FTA members usually became aware of the growth of criminal problems arising out of FTAs several years after they are implemented. They then try to develop ad hoc enforcement agreements and arrangements. However, these agreements and arrangements usually have a narrower scope than the FTAs, usually lack institutional support, and sometimes overlap. As a result, the international enforcement architecture arising out of FTAs cannot sustain enforcement needs.

Transnational criminal groups and criminals live and operate in a borderless world. Increasingly, transnational criminals are diversifying their crimes, instrumentalities, markets, and networks. Their intelligence networks and the coincidence of economic and political power enable them to quickly transfer parts of their operations and enterprises to the territories that they can dominate (e.g., "gray areas" in which governments do not effectively control their territory – Afghanistan and parts of Pakistan and Yemen)[5] or to operate surreptitiously (e.g., with sleeper cells).[6] Although national governments have determined that transnational organized crime and terrorism are national security threats and have implemented various initiatives to combat those threats,[7] they are continuously and actively seeking more significant political and legal initiatives to establish effective international enforcement regimes. Some policymakers believe that effectively

[4] Some of this introduction is adopted from Bruce Zagaris, *U.S. International Cooperation against Transnational Organized Crime*, 44 Wayne L. Rev. 1402–1405. 1–402–5 (1998). For additional background on globalization and international white collar crime, *see* Hervé Boullanger, La Criminalité Economique en Europe (Economic Crime in Europe) 35–46 (2002).

[5] For a discussion of the gray area phenomena, whereby terrorists and criminals use portions of countries where the government does not effectively control its territory to hide and operate their enterprises, *see* Gray Area Phenomena: Confronting the New World Disorder (Max G. Manwaring ed., 1993).

[6] *See, e.g.*, Peter A. Lupsha, *Transnational Organized Crime versus the Nation-State*, 2 Transnat'l Org. Crime 21–48 (1996).

[7] *See Interview with the Hon. Richard A. Clarke, Special Assistant to the President and Senior Director, Global Issues and Multinational Affairs, National Security Council, Nov. 30, 1995*, 1 Trends in Org. Crime 5–9 (1996).

combating new transnational crimes requires significant transformations in national legal systems.[8]

The international community and individual countries such as the United States have enacted a substantial amount of new legislation and developed initiatives to combat new transnational crimes, such as cybercrime, intellectual property and international tax crime, terrorism, and organized crime.[9] Yet, to a greater extent, globalization, free trade, and information technology have facilitated borderless transnational criminal operations. As transnational crime and especially terrorism increase and transnational criminal groups proliferate, national governments are challenged to prevent and combat transnational criminals operating in a borderless world.

Cybercrime exemplifies the difficulty whereby legal systems try to keep pace with the tremendous changes in technology that have enabled criminals to perpetrate diverse crimes, such as financial fraud, identity theft, pornography, hate crimes, and a vast range of other offenses. The international community is struggling to develop an enforcement regime that can use new technology to assist in the identification, investigation, and prosecution of cybercriminals.[10] In this regard, the proposed Council of Europe Convention against Cybercrime provides a strong potential mechanism.[11]

Intellectual property and counterfeiting crimes have grown tremendously in recent decades. Criminals counterfeit everything from software to cosmetics and clothing, indeed nearly every product that is sold internationally. The international community and governments have tried a combination of domestic criminal law and international trade law, such as Trade in Related Intellectual Property Services (TRIPS), the Anti-Counterfeiting Trade Agreement[12] and NAFTA, to criminalize violations of transnational intellectual property. For instance, in the United States trade associations such as the International Intellectual Property Association and the Motion Picture Society of America have pressured the U.S. government to bring an action against Mexico because of its government's alleged lack of criminal action against persons who intentionally violate IP law. Indeed, these same U.S. trade associations succeeded in persuading the NAFTA signatories to include provisions requiring criminal prosecution and civil action against violators of IP law – the only part of NAFTA that allows for criminal action to remedy IP crimes.

[8] *See, e.g.*, Senator John Kerry, The New War: The Web of Crime that Threatens America's Security 31 (1997).

[9] On Oct. 22, 1995, President Clinton used the occasion of his fourteen-minute speech before the fiftieth anniversary of the UN to announce a number of new initiatives against transnational organized crime, including the extension of economic sanctions against certain Colombian narcotics trafficking organizations. *See Remarks of President Clinton to the United Nations on the Occasion of the 50th Anniversary of the Creation of the United Nations*, Fed. News Service, Oct. 22, 1995, available in Lexis, Nexis Library, Curnws File. For the economic sanctions, *see* Exec. Order No. 12,978, 60 Fed. Reg. 54,579 (1995); for the text of Presidential Directive 42 on transnational crime, *see* White House, *Presidential Directive on International Organized Crime, Summary Sheet*, Oct. 22, 1995.

[10] *See* Harold Hongju Koh, *International Law in Cyberspace*, 54 Harv. Int'l L.J. 1 (2012) (remarks as prepared for Delivery by Harold Hongju Koh to the USCYBERCOM Inter-Agency Legal Conference Ft. Meade, MD., Sept. 18, 2012); Michael N. Schmitt, *International Law in Cyberspace: The Koh Speech and Tallinn Manual Juxtaposed*, 54 harv. Int'l L.J. 13 (2012).

[11] Council of Europe Convention on Cybercrime, Oct. 11, 2001 http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm.

[12] See ACTA Signing Participants in Tokyo, Japan on October 1, 2011Anti-Counterfeiting Trade Agreement (ACTA) http://www.ustr.gov/acta.

Money laundering is an example of the type of crime that governments and the international community have only criminalized since the mid-1980s. Through international conventions, such as the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the international community has extended the use of a new anti-money laundering enforcement regime to the entire world. Signatories are required to criminalize laundering offenses and initiate asset forfeiture and confiscation as remedies. These conventions require a broad range of international enforcement cooperation efforts, including evidence gathering and extradition, and also suggest a range of more customized bilateral cooperation agreements. Institutionally, the new crime of money laundering has spawned the establishment of financial investigative (or intelligence) units (FIUs) around the world, as well as the Egmont Group, an association of FIUs that meets regularly to facilitate cooperation among FIUs and develop uniform approaches to core issues. Anti-money laundering has given rise to new organizations and groups, such as the Financial Action Task Force on Anti-Money Laundering (FATF). Growing out of the industrial G7 meetings, FATF has developed cutting-edge requirements on legal, financial, and external relations with respect to anti-money laundering. Unfortunately, the erosion of bank and financial privacy has been among the many legal transformations brought about by anti-money laundering laws.

In the aftermath of the September 11, 2001, terrorist attacks, the emphasis of the U.S. government and the international community on counterterrorism financial enforcement has increased. The U.S. government has invoked a war paradigm and initiated a comprehensive financial strategy aimed at detecting, through financial movements, transnational terrorist movements and plans and preventing new terrorist attacks. The strategy is designed to investigate, prosecute, and seize terrorist assets by applying many of the anti-money laundering due diligence requirements commonly used by the private sector to counter terrorism. Simultaneously, the United States and the international community led by the UN have applied its economic sanctions regime to terrorists. The U.S. strategy seeks to develop comprehensive international counterterrorism financial enforcement.

Although the international community has engaged in tax enforcement cooperation for many years through exchange of information provisions within income tax treaties and exchange of information agreements, many national courts have traditionally taken the position that one country will not help collect the taxes of another country. As a result, courts have refused to enforce foreign tax judgments and even requests for assistance. During the last two or three decades, the international community has developed multilateral conventions, such as the 1988 Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters (as amended by the 2009 protocol), to overcome the traditional judicial reluctance to help foreign tax authorities. Increasingly, international organizations of tax authorities have met regularly to develop uniform approaches, networks, and conventions to reduce gaps in tax laws and strengthen enforcement cooperation. Additionally, national governments have criminalized tax fraud and evasion and required extensive and draconian reporting regimes that include administrative penal laws for noncompliance.

The international community has developed offshore blacklisting as a means to accelerate compliance with new "soft law." In 1999 and 2000, governments and international

organizations continued their active efforts to increase regulatory and criminal enforcement of various laws to stem the tide of transnational crime. These efforts were reflected in the criminalization of various business and financial transactions, the imposition of new due diligence measures on the private sector and the concomitant weakening of privacy and confidentiality laws, strengthened penalties for noncompliance with regulatory efforts, and new law enforcement techniques. These techniques include undercover sting operations, wiretapping, expanded powers to search homes and businesses, and "controlled deliveries." The latter term signifies the technique whereby law enforcement allows the delivery of contraband to occur in order to identify and surveil the participants in the illegal transportation of the contraband. Law enforcement allows the delivery to occur in order to try to identify the leaders of the contraband delivery and criminal enterprises, penetrate and ultimately arrest and prosecute them.

A major development in 2000 was the almost simultaneous issuance by several international institutions of blacklists against noncompliant organizations. Within a one-month period, the Organization of Economic Cooperation and Development (OECD) issued its harmful tax competition initiative with a list of tax havens that did not agree to publicly commit to bring their practices into compliance; the Financial Stability Forum (FSF) now Financial Stability Board (FSB) issued its report on offshore financial centers (OFCs), classifying OFCs into three levels of compliance with international standards; and the Financial Action Task Force on Anti-Money Laundering (FATF) issued its list of fifteen noncomplying countries.

The simultaneous issuing of blacklists was an attempt to jumpstart the anti-money laundering enforcement regime and confer on soft laws a greater status in international law and politics. The October 2005 FATF decision to continue blacklisting fifteen noncooperative countries, together with the lack of any new commitments by the OECD harmful tax competition initiative and the decision by the International Monetary Fund (IMF) to take over the OFC work of the FSB, has meant that some companies, businesses, and investors are reconsidering the structure of their investments. On April 2, 2009, coincident to the G-20 meeting, the OECD issued a progress report on the harmful tax practices initiative, containing a more sophisticated group of white lists, gray lists, and black lists.

The convergence of the various initiatives shows a determination by intergovernmental organizations to combine development of an international financial enforcement subregime, which includes international tax and anti-money laundering policies, with the new international financial architecture, particularly the work of the FSF.

Countries such as Italy and the United States have pioneered national legislation to combat organized crime. On December 15, 2000, 124 countries signed the UN Convention on Transnational Organized Crime at a conference in Palermo, Italy, signifying the start of the construction of an international enforcement regime against transnational organized crime. The convention's three protocols (one to prevent, suppress, and punish trafficking in persons; a second against the smuggling of migrants by land, air, and sea; and a third on the illicit transfer of firearms) represent a new effort to attack transnational organized crime activity. The convention, effective as of the start of 2006, employs some of the same methods of the UN Counterdrug Convention, including using anti-money laundering and asset forfeiture efforts against transnational organized crime.

The challenges of transnational criminality at the millennium are substantial. Unless nation-states become better at networking and cooperating, they will lose power to

transnational criminals who operate in a borderless world. To gain and maintain respect for their democracies, states must develop international enforcement regimes that are balanced and maintain fundamental and international human rights. To achieve success in combating transnational crime, criminal justice professionals must become more adept at working with noncriminal legal professionals, diplomats, international relations professionals, and a host of others. For instance, criminal justice professionals must study international organizational theory and chart the start, emergence, and evolution of international enforcement regimes. Indeed, new transnational crimes and responses in the context of globalization will continue to pose a mighty challenge to the legal and law enforcement professions.

This book examines recent approaches by the United States and the international community to combating the financing of international crime. In particular, it looks at organized crime, taxation, transnational corruption, securities and commodities futures enforcement, economic sanctions, environmental crime and money laundering/terrorist financing enforcement. Although the book discusses criminal and international law or international criminal law, as it is often called, it also focuses on the international aspects of administrative penal law. Focusing largely on U.S. laws and the U.S. legal perspective, this book discusses comparative and international law where relevant.

III. The Scope of International White Collar Crime

International white collar crime encompasses a number of problems in the areas where criminal, business and economic, and international law overlap and interact. Economic and financial crime refer to diverse activities that cannot be included under a homogeneous rubric. The newness of the field, the overlap of criminal and administrative penal law, the scope of economic and financial law, and divergences among legal systems make an accurate definition elusive.[13] The area is undergoing tremendous change and growth as a result of globalization and the increasing use of criminal and administrative penal sanctions to enforce international business norms.

This section divides international white collar crime into the following subareas: (1) substantive white collar crimes, (2) procedural aspects of white collar crimes, (3) the role of international organizations, and (4) the role of nongovernmental organizations.

International white collar crime may be thought to be intrinsic to the international economy. Such a perspective views international white collar crime not as forms of deviance from, but as rooted in the international economy itself. Hence, the market is the main source and mode of illegal conduct. Authors who emphasize the economic component of international white collar crime suggest that violations in the economic world are part and parcel of economic development. However, this perspective does not address the extent to which economic and financial crime data do or do not follow a precise pattern related to the economy, which is still an issue for criminological debate.[14] Although this book considers the economic component, it does not focus specifically on it.

[13] Vincenzo Ruggiero, *Economic and Financial Crime in Europe*, La Criminalité Economique et Financiere en Europe (Economic and Financial Crime in Europe 19, 24 (Paul Ponsaers & Vincenzo Ruggiero eds., L'Harmattan, 2002).

[14] Ruggiero, *id.* at 20.

One dynamic aspect of international white collar crime is that economic crime reacts to systemic economic changes caused by new combinations of productive factors. For example, the combination of banking and computers has led to cyberbanking and cyber-financial products such as Internet gaming. Deviant entrepreneurs introduce new combinations of productive factors while devising deviant adaptations to economic changes, thereby pursuing legitimate goals through illegitimate means. White collar criminals also innovate by repelling the criminal label from their activity while directing it to competitors. Hence, innovation in international white collar crime requires changes in the perception of business, whereby persons who innovate successfully claim their activities and practices to be ethical and those of competitors to be unethical.[15]

Some background in international criminal law (ICL) is required to understand international white collar crime. ICL is largely a mix of the penal aspects of international law and the international law aspects of criminal law. The international aspects of national criminal law consist of extraterritorial jurisdictional norms, conflicts of criminal jurisdiction between states and between a state and an international organization, and the international sources of law applicable to modalities of international cooperation in penal matters or the indirect enforcement system. The applicable international sources of law are found in multilateral and bilateral treaties, customary international law, and national norms applicable to national legal proceedings.[16]

The penal aspects of international law arise out of "conventions," "customs," and "general principles of law," all of which are among the sources of international law as set forth in Article 38 of the International Court of Justice's statute. However, the sources are subject to the principles of legality that derive from general principles of international law. The penal aspects of international law include the following: international crimes, elements of international criminal responsibility, the procedural aspects of the direct enforcement system of ICL, and certain aspects of the enforcement modalities of the indirect enforcement system of ICL. Increasingly the penal law aspects of international law have expanded and overlap with the international law aspects of national criminal law.[17]

A. *Substantive White Collar Crimes*

Substantive white collar crimes refer to legal areas of crime that national and international laws seek to prevent and punish. They can include fraud, customs, computer crimes (also referred to as cybercrimes), securities, commodities futures, antitrust, immigration, intellectual property, customs, export control, environmental, money laundering, narcotics, organized crime, transnational corruption, and taxation. This book necessarily covers only selected white collar crime areas.

B. *Procedural Aspects of White Collar Crimes*

The procedural aspects of international white collar crimes encompass all the national and international aspects of investigating, prosecuting, and then enforcing sanctions

[15] *Id.* at 26–27.
[16] M. Cherif Bassiouni, Introduction to International Criminal Law 5 (2003).
[17] *Id.* at 5.

against white collar crimes. This book discusses jurisdiction, evidence gathering, asset freezes and forfeiture, gaining custody (i.e., extradition and alternatives), transfer of proceedings, recognition and enforcement of judgments, and transfer of prisoners.

C. *The Role of International Organizations*

The role of international organizations, also known as international governmental organizations (IGOs), is critical because these IGOs develop hard and soft law standards in international white collar crime and help implement those standards. Some IGOs operate on a universal level, whereas other ones operate on a regional level. Some IGOs, such as banks, securities and commodities futures regulators, and financial intelligence units, have functional scopes.

Institutional responses to international white collar crime are triggered by diverse forces. First, international pressure demands that legislative loopholes be closed and approaches and laws be harmonized wherever possible. Second, the general awareness exists that this type of crime has a great impact on public finances. Third, the perception exists that international white collar crime encourages the development of more conventional forms of criminal activities that in some places are characterized with the synthetic name "organized crime."[18]

D. *The Role of Nongovernmental Organizations*

Increasingly, nongovernmental organizations (NGOs) are playing important roles in combating international white collar crime. Some NGOs, such as the International Committee of the Red Cross, Human Rights Watch, and Amnesty International, focus on international human rights and procedural aspects. Other NGOs include bar associations made up of lawyers; increasingly, these bar associations have committees on international criminal law that focus in part on white collar crime. Law enforcement professionals have their own NGOs, such as the International Association of Chiefs of Police and the International Association of Prosecutors. Other NGOs are business groups, such as the International Chamber of Commerce and various banking associations. NGOs also focus on enforcement of international subenforcement issues, such as the environment [e.g., Conservation International, Earthwatch, Friends of Nature, Greenpeace, International Union for Conservation of Nature (IUCN), Rainforest Alliance, and World Wide Fund for Nature (WWF)]. Because efforts to combat international white collar crime emphasize the privatization of some of the prevention and related crime-solving roles, business groups have become important partners with governments and IGOs.

E. *Constructing International Enforcement Regimes*

One of the subjects discussed in this book is the effort to develop international enforcement regimes. International relations theory explains the manner in which international institutions affect collaboration among states by mediating and defining international relationships. Known as regime theory, this explanation has been an important focus of international relations study for the last twenty to twenty-five years. One of the main scholars of international regime theory, Stephen Krasner, defines international organizations

[18] Ruggiero, *supra* note 10, at 26.

or regimes "as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations."[19] Regimes can take well-defined forms, such as the United Nations, or they can exist more informally, such as through networks. Regime theorists believe that regimes are common mechanisms of international cooperation whose importance is derived from their ability to shape the means through which states relate to one another in ways that theorists who examine states as autarchic entities in an anarchic international system cannot successfully explain.[20]

According to Robert O. Keohane, one of the important theorists of international regime theory, regimes attract the participation of states by reducing the transaction costs of mutually beneficial cooperation.[21] Regimes facilitate multilateral negotiations, legitimate and delegitimate different types of state action, enable the exchange of information, and promote the basis for enforcement of agreements.[22]

Professor Keohane defines international regimes both as "institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations" and more narrowly as "specific contractual solutions" to international problems.[23] Within a multilayered system, an important function of international regimes is to facilitate the making of specific agreements on matters of substantive importance within the issue-area encompassed by the regime – here international enforcement and specifically, in international enforcement subregimes, anti-money laundering and counterterrorism financial enforcement, anticorruption, and tax enforcement.[24] Hence, regime theory offers a useful mechanism to describe international enforcement cooperation, including efforts to build an enforcement regime against transnational crime or at least against various types of transnational crime.

Several chapters in this book discuss efforts to develop international enforcement subregimes. For instance, the establishment of the Egmont Group of Financial Intelligence Units, which has its headquarters in Canada, is an example of how governments are developing an international anti-money laundering enforcement and regulatory regime. The various international anticorruption conventions are how starting to develop an anticorruption enforcement subregime.

The efforts to develop international enforcement regimes for international white collar crime make the subject and this book of interest for international relations studies.

F. *The Role of International Enforcement Networks*

An important breakthrough in international enforcement has been the development, as part of regime enforcement, of governmental networks. The identification of governmental networks has arisen in part out of the emergence of a world politics paradigm

[19] Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, *in* International Regimes 2, 2 (Stephen D. Krasner ed., 1983); David Zaring, *International Law by Other Means: The Twilight Existence of International Financial Regulatory Organizations*, 33 Tex. Int'l L.J. 281, 309.

[20] Zaring, *id*.

[21] *Id*. Robert O. Keohane, After Hegemony: Cooperation and Discord in the World Political Economy (hereafter After Hegemony) 244 (1984). *See also* Robert O. Keohane, *The Demand for International Regimes*, *in* International Regimes, 141, 141–72.

[22] Keohane, After Hegemony, *supra* note 18, at 244–45.

[23] Robert Keohane, International Institutions and State Power: Essays in International Relations 3–4 (1989).

[24] Keohane, *The Demand for International Regimes*, *supra* note 18, at 150.

that conceptualizes transnational relations as transcending the nation-state and broadening the conception of actions to include transnational actors, such as nongovernmental organizations.[25] Anne-Marie Slaughter has done much pioneering work in this field, showing that each of the networks has specific aims and activities, depending on its subject area, membership, and history. Taken together, they also perform certain common functions. They expand regulatory and enforcement reach. Networks permit national government officials to keep up with other actors, such as 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 by implementing the obligations of the enforcement regime. These are the conditions essential for long-term cooperation. Networks also exchange regular information about their own activities and develop databases of best practices. They offer technical assistance and professional socialization to interested members from less developed nations, whether regulators, judges, or legislators.[26]

The concept of a "network" has many dimensions. A network includes all the different ways in which individual government institutions interact with their counterparts whether abroad or above them, alongside more traditional state-to-state interactions. Hence, a network is a pattern of regular and purposive relations among like government units working across the borders that divide countries from one another and that demarcate the "domestic" from the "international" sphere.[27]

Networks are an important form of global governance and foreign policy option. As a form of global governance, governmental networks are quite useful. Composed of national government officials, either appointed by elected officials or directly elected themselves, these networks can perform many of the functions of a world government – legislation, administration, and adjudication without the form of a government per se.[28]

Governmental networks facilitate compliance because, as noted earlier, international regimes promote the making of agreements. Governments' anticipation that international regimes will increase compliance motivates their making of such agreements. By creating incentives for compliance, regimes also make it more attractive for potential members to join. Social pressure, exercised through linkages among issues, provides the most compelling reasons for governments to comply with their commitments. Hence, governments may comply with rules because if they do not, other governments will observe their behavior, evaluate it negatively, and perhaps take retaliatory action.[29] Sometimes retaliation will be specific and authorized under the rules of a regime, such as blacklists in the context of the OECD tax transparency initiative (formerly known as harmful tax practices initiative) and the FATF initiative on Non-Compliant Countries and Territories (NCCT). In this connection, states and territories targeted by the OECD and FATF initiatives perceived that the costs of acquiring a bad reputation as a result of rule

[25] *See, e.g.*, Joseph S. Nye, Jr. & Robert O. Keohane, *Transnational Relations and World Politics*, *in* Transnational Relations and World Politics 371, 380, and 382 (Robert O. Keohane & Joseph S. Nye, Jr. eds., Harvard U. Press, 1971) (providing diagrams of the interactions among government, intergovernmental, and nongovernmental actors in world politics and bilateral interactions in world politics).

[26] Anne Marie Slaughter, A New World Order 3–4 (2004). *See also* Keohane, *The Demand for International Regimes*, *supra* note 18, at 148–55.

[27] Slaughter, *id.* at 14.

[28] *Id.* at 4.

[29] Keohane, After Hegemony, *supra* note 18, at 103.