5 Global governance as multi-level governance

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5.1 INTRODUCTION

'Global governance' is an amorphous term which draws a lot of attention partially because the concept is open to many interpretations. Common to all uses of the term global governance is the notion that it is distinct from international anarchy – the unrestricted interplay of states driven by self-interest. In global governance contexts, states and other social actors recognize the existence of obligations and feel, at least to some extent, compelled to honor them. This spin of the term governance is specific to the field of international relations. While governance in other academic disciplines often refers to the replacement of state regulations by public-private partnerships and market mechanisms and is thus sometimes seen as part of a neo-liberal program (Offe 2008, p. 65), in international relations it has been connected to the notion of more, not less, regulation. However, this regulatory spin is not only idiosyncratic to a specific academic subdiscipline, but also points to the core of the concept of governance, namely to regulate collective problems and achieve common goals (Mayntz 2008).

Governance refers to the entirety of regulations – that is, the processes by which norms, rules and programs are monitored, enforced and adapted, as well as the structures in which they work – put forward with reference to solving a specific problem or providing a common good (see Benz 2005; Schuppert 2007; Zürn 2008). Governance activities are justified with reference to the common good, but they do not necessarily serve it. While government refers to an actor, governance describes an activity independent of the kind of actor carrying it out (Rosenau 1992). The term governance thus encompasses structures, processes and policy content, which the common distinction between policy, polity and politics may help to disentangle.

What follows from this for the notion of global governance? To begin with, the need to distinguish governance structure from contents is especially important. All forms of governance beyond the nation state lack a central authority or a 'world state' equipped with a legitimate monopoly of the use of force. Thus global governance cannot take on the form of governance by governments; rather, it needs to be a form of governance with governments such as we see in intergovernmental institutions, or governance without government as in the case of transnational institutions.

Governance with (many) governments regulates, via intergovernmental agreements, state and non-state activities, the effects of which extend beyond national borders. Central to governance with many governments are international regimes, defined as social institutions consisting of agreed-upon and publicly announced principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue areas. As such, regimes contain specific regulations and give rise to recognized social practices in international society. Regimes comprise both substantive and procedural rules and are thus distinct from mere intergovernmental networks which frequently
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Only include procedural rules. Such networks meet on a regular basis and may develop coordinated responses to specific situations, but they do not govern behavior in a certain issue area over a prolonged period of time. Other components of international governance are international organizations, which are material entities and can be the infrastructure for both international regimes and intergovernmental networks. Any of these components of international governance beyond the nation state can be regional or global in scope. The transgovernmental form of governance can be seen as a subtype of governance with governments, comprising 'informal institutions linking regulators, legislators, judges, and other actors across national boundaries to carry out various aspects of global governance' (Slaughter and Hale, Chapter 23 in this volume).

Although the role of governance without government has increased over the last two decades (see Beisheim et al., Chapter 24 and Scholte, Chapter 25 in this volume), it is arguably still less significant than government with many governments. Some of these transnational organizations are standard-setting associations that work as part of a larger international institution established by intergovernmental agreement, while others are part of an issue-area-specific policy network with national governments still in the position to accept or veto agreements. In some issue areas the roles of transnational regimes, organizations and networks are central. Civil society is a necessary prerequisite for transnational regulation. However, transnational regulation is only a minor part of all civil society activities. Civil society represents the whole 'arena of politics where associations of citizens seek ... to shape rules that govern social life' (Scholte in this volume).

Overall, the sum of all institutional arrangements – be they international, transgovernmental or transnational – beyond the nation state is usually considered to constitute regional or global governance systems.

The way I have conceptualized global governance is not necessarily identical with multi-level governance. In order to speak of global governance as 'multi-level' two additional conditions have to be met. First, the global level must be autonomous. It must be more than just intergovernmental coordination with no delegation of powers to spheres outside the member states. As long as international relations are structured by the consensus principle, according to which states only comply with what they have agreed to, it does not make sense to speak of a multi-level governance system. A system of sovereign nation states is not characterized by a political agent outside of the nation state with significant autonomy or some powers, even if some of the states do cooperate closely. Second, the global level must be part of a system that is characterized by the interplay of different levels rather than work independently from other governance levels. Before we can speak of a multi-level governance system, it thus needs to be shown that the system includes some form of differentiation, be it functional or stratified. The whole notion of a multi-level governance system is based on the idea that segmentary differentiation of similar states, each of which controls a certain territorially defined part of the world – typical for the international system – gets replaced by one that is at least to some extent characterized by functional and stratificatory differentiation.

In this chapter, I want to argue that global governance can indeed be described as a specific form of multi-level governance. Consequently, the virtues and flaws of federal political systems are not particular to them, but are to some extent globalized. Some of the problems of federal political systems thus re-emerge on the global level; at the same
time these problems are accentuated on the national level. Multi-level governance thus becomes – so the most fundamental thesis of this contribution – the conditio politica of the twenty-first century.

Against this conceptual backdrop, three issues will be tackled in the ensuing sections. The first two sections are devoted to showing that global governance can be adequately described as a partially autonomous element of a more comprehensive multi-level governance system. It is argued that political institutions on the global level today possess a significant level of autonomy (Section 5.2) and that those international institutions only achieve their effect by interacting with other political levels (Section 5.3). Next, the specific features of the global multi-level governance system compared to other national or regional multi-level governance systems are discussed (Section 5.4). In the concluding section (Section 5.5), the systematic outcomes and the built-in deficiencies of such a system are examined.

5.2 BEYOND INTERGOVERNMENTALISM

Intergovernmentalists do not see the international system as a multi-level governance system. They argue that international organizations are tightly controlled by member states. The administrative apparatus and the budget of most of these organizations are indeed tiny. They do not levy taxes and do not become involved in redistributive issues. International organizations are thus considered as institutions with delegated authority, but do not constitute a political level in their own right (see, for instance, Kahler 2004).

This intergovernmentalist argument is based on a Westphalian notion of sovereignty, which emphasized the principle of non-intervention into domestic affairs and – closely related – the consensus principle (see also Humrich and Zangl, Chapter 22 in this volume). This notion involved three components: first, that the ruler of a state exercises sole authority over the territory of that state; second, that all states are judicially equal; and third, that state parties are not subject to any law other than their own, to which they do not consent (Sadat 2000, p. 22; cited in Deitelhoff 2006, p. 162). It still applies to a model of international institutions that became especially relevant after World War II. The substantial principle behind these post-World War II international institutions was summed up in the term ‘embedded liberalism’ (Ruggie 1983). This term describes an orientation towards free trade and open borders while, at the same time, remaining firmly rooted in national political systems which are able to absorb the shocks and irregularities of the world market. International institutions thus established a form of intergovernmental governance which enabled national governance to function effectively, and initially even led to an extension of state activities.

Embedded liberalism came with a distinctive method of international decision making and thus also contains a procedural component that I suggest calling ‘executive multilateralism.’ This term is used to describe a decision-making mode in which governmental representatives (mainly cabinet ministers) from different countries coordinate their policies internationally but with little national parliamentary control and away from public scrutiny. On the one hand, multilateralism refers to a decision-making system that is open to all states involved, includes a generalized principle of conduct, creates expectations of diffuse reciprocity and is seen as indivisible (Ruggie 1992). On the other hand
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and this aspect was neglected for a long time – multilateralism after World War II was heavily executive-centered, since the rules of embedded liberalism were negotiated internationally and implemented nationally without the contribution of the legislatures and without the systematic incorporation of national or transnational societal actors.\textsuperscript{11}

This changed in the age of globalization, because embedded liberalism has displayed a dynamic of its own: the growing number of international institutions since World War II has made national borders less significant for societal transactions, and this in turn has led to an increase in the number and political scope of international institutions. It is this institutional dynamic that has brought the establishment of an expedient political order onto the international political agenda.

What characterizes this institutional dynamic? One measure of its extent is the growth in numbers of international multilateral agreements. Indeed, there was a linear increase from 150 in 1960 to 517 in 2005 (UNTC 2009).\textsuperscript{12} A further measure of institutional dynamic is the new quality of international governance. This development becomes manifest when one contrasts the typical traditional multilateral institutions of embedded liberalism with the new international institutions in the age of globalization. The General Agreement on Tariffs and Trade (GATT) regime is a good example of a traditional international institution. Its form of regulation has three distinctive features:

- The states are the ultimate and exclusive addressees of the regulation. They are issued with directives not to increase customs tariffs or to apply them in a discriminatory way. The objective of the regulation is therefore to influence state behavior in order to solve the problem in question, in this case, protectionism.
- Such regulations take effect at the borders between states, and in this sense they primarily constitute a form of interface management, regulating the transit of 'goods and bads' out of one national society into another.
- There is a relatively high degree of certainty about the effects of such regulations. The actors are able to make relatively precise, empirically sound predictions about the economic consequences of their tariffs.

Today international institutions have different features. International regimes for overcoming global environmental problems are typical examples here.

- The ultimate addressees of regulations issued by international institutions are largely societal actors. While the states act as intermediaries between the international institutions and the addressees, it is ultimately societal actors such as consumers and businesses who have to alter their behavior in order to, say, reduce CO\textsubscript{2} or CFC emissions (see Parson 2003).
- The new international institutions are no longer merely concerned with interface management. The reduction of pollutants requires regulations that take effect behind the national borders within the national societies. In this sense, the international climate regime regulates behind-the-border issues (Kahler 1995) and the new international trade regime, with its focus on the prohibition of subsidi- zation and overcoming discriminatory product regulations, has also developed in this direction. Equally, United Nations Security Council measures have been increasingly directed at intrastate rather than interstate wars.
• International institutions today are for the most part concerned with finding solutions to highly complex problems. There is, therefore, a high degree of uncertainty as to the ecological and economic consequences of, say, a particular climate regime (see Dessler and Parson 2006, Chapter 2). The same is also true for financial agreements and regulations on product safety as well as security issues.

In order to successfully tackle highly complex behind-the-border issues with societal actors as the ultimate addressees, a more sophisticated institutional design is needed as in the days of embedded liberalism. This leads to a relative rise of institutional features in international and transnational governance, which increase their autonomy vis-à-vis their member states. Three mechanisms are of special importance here.

• A high density of international institutions gives rise to collisions between different international regulations as well as between national and international ones. In such cases a supranational arbitration body is a reasonable means of settling differences. The dispute settlement procedure of the World Trade Organization (WTO), for instance, decides in the case of a collision between WTO rules and domestic regulations as well as in the case of a collision between environmental and commercial goals (for instance, with reference to the Codex Alimentarius). Furthermore, the increased complexity of issues also gives rise to a greater need for independent dispute settlement bodies. In a similar vein, the relative rise of majority decision making in international organizations can serve the need to resolve deadlocks between different levels and issue areas.

• Supranational features also gain in importance as the number of regimes that are concerned with behind-the-border issues and that specify societal actors as the ultimate addressees grow. In such cases verification problems become more complicated. The more difficult compliance and monitoring become, the greater the need for independent agents to gather and provide reliable information on compliance rates. Hence, many international secretariats have been assigned the task to gather information about rule compliance; at the same time, transnational NGOs like Amnesty International are most active in this area.

• Finally, the growing need for international institutions to gather and distribute impartial knowledge and information on complex international problems also strengthens the trend towards supranational features of international and transnational governance institutions. The conferences and institutes created by the United Nations Environmental Program such as the Intergovernmental Panel for Climate Change are good examples for this development. In such cases, one transnational knowledge network advises many national governments and thus pre-structures national responses in top-down fashion.

As a result of the need for new institutional forms, a dense network of international regulations and organizations of unprecedented quality and quantity has developed. These new international institutions are far more intrusive than conventional international institutions. They can circumvent the resistance of most governments via decision-making and dispute settlement procedures, through the interaction of monitoring agencies with transnational society, and by dominating the process of
knowledge generation in some fields. With the – most often consensual – decision to install international institutions with such features, state parties become subject to a law other than their own, to which they have either not agreed upon (mission creep) or do not agree any more (costly exit option) (see also the contribution of Humrich and Zangl in this volume). Given the extent of the intrusion of these new international institutions into the affairs of national societies, the notion of ‘delegated, and therefore controlled authority’ in the principal-and-agent sense no longer holds. \(^{17}\) At least in some issue areas, the global level has achieved a certain degree of autonomy and has thus partially replaced the consensus principle of the traditional international system.

5.3 TOWARDS A MULTI-LEVEL SYSTEM

The nation state has been characterized by the bundling of different aspects of governance into one political organization. Governance by government has for a long time been possible since one political organization – the territorial state – could provide a complex set of different governance functions. The territorial state, for instance, has the monopoly on the use of force, the ability to collect taxes, the authority to recognize other states and the capability to design policies that reflect the public interest. Kenneth Waltz (1979) therefore pointed out that the traditional interstate political system was internally not characterized by institutionalized functional differentiation. In Waltz’s view, all functional differentiation took place within the state; there was no recognized division of labor between different states. Territorial segmentation was thus the dominant mode of differentiation in the international political system. \(^{18}\)

However, the challenges of, and responses to, globalization appear to be transforming this Westphalian or national constellation. \(^{19}\) The new constellation seems to be characterized more by an unbundling of the governance functions of the territorial state and their reassignment to different governance levels. It is therefore based on the interplay between different levels, which in turn is constitutive for the reproduction of each level. In this sense, the interplay of these different levels resembles the logic of a multi-level governance system. \(^{20}\)

Waltz did not explore the question of whether or not the lack of internal functional differentiation within the political system might also inhibit the external functional differentiation between different subsystems such as economy, law, science, art and so on (see Albert and Buzan 2007 for this point). I would argue that the lack of any functional differentiation in the political system, that is, the lack of any checks and balances and the exclusive focus on power as the decisive means to prevail, leads to a dominance of the political system over other societal systems. Therefore, the lack of functional differentiation in the political system prevented, for a long time, the full-scale development of worldwide societal subsystems along sectoral lines. In this perspective, it is the growing differentiation and interdependence in the political sphere which only allows the development of functional differentiation driven by the inner logic of different subsystems like economy, science, art and law. A functionally differentiated multi-level governance system makes the arbitrary intervention into other societal subsystems much more unlikely than a system of competing, territorially defined political units. Therefore,
functional differentiation within the international political system may be seen as a driver of functional differentiation of the international system as a whole.

I will differentiate between three governance functions in order to elaborate the internal functional differentiation of the international political system.\footnote{21}

1. Decision making and regulation. Nation states have increasing difficulties in designing unilateral policies or regulations that are of use in attaining governance goals such as security, legal certainty, legitimacy or social welfare. The incongruence of political and social spaces leads systematically to challenges to the effectiveness of national policies (Held 1995; Beck 1997). Governments and other political groups react to these unintended consequences of social change, which were partially encouraged by national policies. The primary response is the formation of international institutions that help to readjust political and social spaces, and thus to regain the effectiveness of policies, either by directly regulating cross-border activities or, more often, by coordinating national decisions on a larger scale. Hence, systems of interest mediation that are restricted to the nation state lose importance, especially since political actors such as national executives who are active on both levels can use their privileged position (Moravcsik 1994; Zürn 1996; Wolf 1999). A secondary response of the more powerful interest groups is therefore to participate directly at the level of international institutions – something that occurs increasingly, as indicated by the rise of transnational governance actors. In this sense, the formulation of policies for most of the issue areas affected by the challenges of globalization has been deferred to levels beyond the nation state.

2. Implementation and resources. However, the changes regarding regulation should by no means be read as an indication of the demise of the nation state. First, the developments described here apply only to certain denationalized issue areas; others still follow the logic of the national constellation. Second, and more importantly, it is hard to see how governance goals can be achieved without the nation state even in strongly denationalized issue areas. To put it in terms of functional theories: the increasing inability of an institution to fulfill a function can only be seen as an indicator of its impending extinction if there are rival institutions which can be expected to fulfill all the functions of the old institution more efficiently (Spruyt 1994). For instance, the elimination of the problems relating to global financial markets, organized crime or global environmental risks is hardly conceivable without nation states. Especially for the implementation of policies the nation state seems to be indispensable. This is due to its control of resources based on its legal monopoly on the use of force and its capacity to raise taxes.\footnote{22} The high degree of cooperation between governmental agencies and the rise of transgovernmental networks indicates that many governments see their counterparts in other countries less as competitors in a hostile environment than as allies in the search for effective policy implementation and efficient administration.

3. Acceptance and recognition. The most complicated and important changes seem to have occurred with regard to recognition. External recognition as a sovereign state, once attained, was, in principle, permanently valid. States disappeared only because of internal developments or brute force from outside, overriding the principle of sovereignty. Nowadays, the recognition of a state increasingly seems to depend
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upon its respect for individual rights and freedoms, for which a state can be sued by its citizens before the European Court of Justice and, under certain circumstances, before the European Court of Human Rights. In extreme cases, violations of human rights can even be regarded as justification for intervention – some instances of United Nations involvement, especially in the 1990s, may be seen as cases in point. Moreover, the growing use of international observers on the occasion of national elections indicates a trend towards making critical elections global events (Rosenau 1997, p. 259), and the concept of 'good governance' is now also used to evaluate national policies through international institutions like the World Bank (1997). In light of these developments, it seems that the recognition of a state as such now tends to be less a one-shot constitutive act and more the result of permanent legitimacy monitoring. Thomas M. Franck (1992, p. 50) pointed out nearly two decades ago: ‘We are witnessing a sea change in international law, as a result of which the legitimacy of each government someday will be measured definitely by international rules and processes.’

The subject performing this monitoring function today is not only the international society of states, but increasingly also an emergent transnational civil society as well as supranational bodies that act with some autonomy from national governments. Supranational bodies set the standards of behavior and sometimes determine whether deviant state behavior is defensible via quasi-judicial bodies. Transnational society most often provides the relevant information and, in extreme cases or repeated instances of deviant behavior, responds to such outrage. One such response reflecting the indignation of transnational society may be to question the legitimacy of a nation state. Along these lines the former United Nations Secretary General, Kofi Annan, also adopted the perspective that states must serve people. ‘If they fail to do so and permit serious human rights abuses,’ he said, ‘they open themselves to justified intervention by the international community in form of the UN itself.’ In this scenario, however, actions of the United Nations depend on an empowerment by the society of states and the transnational society. Taking this notion further, the authority that grants sovereignty, that is, the exclusive right to set or adopt the rules for a given territory, appears to have changed: it is no longer only states, but also transnational groups who are essential in recognizing nation states as legitimate. What seems to be in the process of changing in world politics is thus both the criteria for recognition and the subject with the authority to recognize a state.

In denationalized issue areas, effective and legitimate governance depends on the interplay of different political levels. It often requires transnational recognition of legitimacy, decision making in global forums and the implementation of these decisions at the national level. Global governance thus does not run parallel to other levels of governance: rather, it is constituted by the interplay of different levels and organizations, whereby each level and organization cannot work unilaterally. In this sense, the national constellation has transformed into a post-national entity.

The concept of multi-level governance promises to better grasp the complex arrangements of governing institutions, with or without national governments, than does the notion of sovereign states. In this constellation nation states will not relinquish their resources such as monopoly on the use of force or the right to exact taxes in a given
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territory. Nevertheless, while the nation state will play a significant role in multi-level systems of governance, it will no longer be the paramount political institution being able to perform all functions, but only one among others carrying out some of these tasks. Not only will policy formulation in most denationalized issue areas be transferred from the nation state to loci beyond it, but legitimacy will also no longer be conferred solely by nation states (externally) and national societies (internally). To a greater extent than ever before, transnational society and international institutions will play a decisive role in the recognition of nation states. The concrete mode of politics within such a polity can still vary greatly as it does among and within nation states. In any case, political systems themselves will become functionally differentiated in the post-national constellation, and it is likely that the convergence of different governance dimensions in one political organization will come to an end. In this sense, most politics in a globalized world will become multi-level politics.

5.4 FEATURES OF THE GLOBAL MULTI-LEVEL GOVERNANCE SYSTEM

If global governance is to be seen as a form of multi-level governance, it is necessary to distinguish it from other multi-level systems. What is special about global governance? How does global governance differ from federal systems? There are many features according to which a multi-level governance system can be described and categorized. In the Introduction to this handbook, we have identified some of them (see also Hooghe and Marks, Chapter 1 in this volume). For the purposes of the argument in this chapter, two distinctions are especially important, which are used to build a typology of multi-level governance systems. The aim here is to identify those features of global governance that would qualify it as multi-level governance system.

First, Fritz W. Scharpf (2009) distinguishes different multi-level systems on the basis of their authority relationships. In every governance structure, there is a basic authority-exchange relationship. On the one hand, individuals and societal actors transfer legitimacy to decision makers who must publicly justify their decisions; in return they receive a general public willingness to accept these decisions. On the other hand, the decision makers have to implement these decisions by using laws, incentives, programs or even coercion; this thus requires interaction with the societal addressees of the decision. From this perspective, any multi-level governance system consists of at least three components: the higher level, the level of constituent member organizations, and the individuals and societal actors who are affected by the decisions. While within a unitary nation state the national government directly regulates societal actors and societal actors transfer legitimacy to the national government, this relationship is at least partially mediated by actors in between levels in a multi-level governance system.

In addition to the authority relationships, multi-level governance systems may be categorized by the location at which the coordination of different policies and societal subsystems takes place. Governance is more than the sum of all regulation. It also involves the coordination of different policies which have been formulated on the same level or at different levels. Coordination takes place via formal procedures on the side of decision makers, for instance, via cabinet rules or supreme courts, and through public
debate on the side of the addressees of a regulation. The term ‘public’ implies that an exchange of opinions takes place, and that views and positions are not just issued, but that a discourse among competing claims occurs. One may distinguish further between broad publics referring to an ideal-typical democratic discourse among citizens of a given political system, which is mediated through mainly newspapers, radio and television. Broad publics often debate about conflicting goals and thus about the coordination of different sectors. Sectoral publics, in turn, comprise formal and informal groups generated through functional differentiation, which devote themselves to specific issues. Here, the medium of interaction is often the Internet, specialized press, or personal exchanges or communications at conferences and meetings (Zürn and Neyer 2005, p. 201). Sectoral publics by definition are not able to mediate intersectoral conflicts.

On the basis of these distinctions, a first group of multi-level systems is defined by the existence of at least one direct authority relationship between the regulatory center and societal actors. This is typical for multi-level governance systems within the nation state, usually combined with the federal level granted a monopoly over the use of force. Within this group one can further distinguish between dual federal and unitary federal systems (Scharpf 2009, p. 252). In dual federalist systems, there are some issue or policy areas which are the exclusive domain of the federal government; in others the state members of the federal system can act independently. While in some issue areas such as foreign policy the individuals are directly connected to the central level in terms of both decisions and implementation, on the one hand, and acceptance of those decisions, on the other, the same applies to the regional level in other issue areas, most prominently in the field of education, for example in Germany. In dualist federal systems, two completely developed governance systems operate - at least in the ideal world – in parallel. They take full responsibility for their policy fields. Therefore, effective mechanisms of policy coordination including supreme courts and broad public exchanges about what general policy direction is right or wrong can be found on both levels.

In a unitary federal system, the situation is different. The individual and societal actors transfer legitimacy to the center, yet the center uses decentralized governance levels for the implementation of their policies. Most of the policy coordination takes place at the central level. This is also true for broad public debates and political discourse in general. Typically, even regional elections are mostly determined by issues contested at the central level.

In a second group of multi-level systems, the higher level of governance is almost completely dissociated from the societal addressees of regulations. These multi-level governance systems have mainly developed beyond the nation state and do not contain a centralized power structure with a monopoly on the use of force at the higher level. In these systems, societal actors confer legitimacy to constituent members of the system, which interact with each other to constitute the higher level beyond the nation state. In return, almost any decision taken at the higher level needs to be organized and implemented through the lower levels. Citizens of nation states therefore rarely have direct contact with the higher levels of multi-level governance systems which reach beyond the nation state. Again, two subtypes can be distinguished. On the one hand, multi-level governance systems which reach beyond the nation state can have the features which Liesbet Hooghe and Gary Marks (see Chapter 1 in this volume) characterize as MLG Type I. This describes a multi-issue-area governance arrangement with a limited number
of non-overlapping jurisdictional boundaries at a limited number of levels. Such a governance structure follows a system-wide architecture which is relatively stable and clearly public in character. Whereas broad public debate is possible, such debates occur most frequently at the constituent member level and are therefore often fragmented. They nevertheless provide for some policy coordination as an expression of some minimal sense of a polity. However, sectoral publics can emerge at the higher level. One can label such systems – of which the European Union is the most relevant, if not the only, example – as post-national multi-level polities.28

In contrast, MLG Type II describes a complex and fluid patchwork of overlapping jurisdictions. In these cases, each issue area has developed its own norms and rules, and the membership varies from issue area to issue area. Debates and discourses take place almost exclusively within sectoral publics. Nevertheless, the interrelationship between the different issue areas becomes denser and frequently takes place informally on different levels and in different spheres but, at the same time, it has not been strongly constitutionalized. One may label such governance arrangements sectoral multi-level regimes and the emergent system as a global multi-level governance system or just global governance. The sum and interplay of many of these multi-level regimes constitutes the global governance structure.

These distinctions lead to the following typology of MLG systems (see also Scharpf 2009).

![Diagram of MLG systems](image)

Figure 5.1  MLG systems
5.5 THE LIMITS OF THE GLOBAL MULTI-LEVEL GOVERNANCE SYSTEM

Can we derive any testable conjectures from this typology? If so, what do they tell us about the working of the global multi-level governance system? Do they contain good news? Will global governance deliver the goods? There are a number of reasons to be skeptical about this. To begin with, the above sketch of a global multi-level governance system is based on an extrapolation of current trends. While multi-level systems of governance may be functional to some extent, the transition from 'national equilibrium' to 'global multi-level equilibrium' may entail problems and disadvantages, with no guarantee that a new and workable equilibrium will ever be reached. More importantly, the global multi-level governance system, even when fully developed, displays some systematic weaknesses. These weaknesses relate to the two-step authority relationship and the absence of a location to coordinate the different fields of regulation.

The first component of the two-step authority relationship denotes the functional differentiation between decisions made on the global level, which are implemented on the constituent member level through the administration, and the resources of the territorial member state. From these features of the global multi-level governance system we can derive two implications. On the one hand, the global multi-level governance system is able to create significant levels of compliance by constituent units and individuals, with regulations agreed upon at the higher level. On the other hand, compared to other multi-level systems, it is to be expected that the possibility of non-compliance will remain a permanent problem in such a system.

The decoupling of the level of decision making from the level that controls resources for implementation of these decisions raises the question about the independence of the levels beyond the nation state. Is it not the capacity for the enforcement of norms and rules that is decisive? The traditional view is indeed that high rates of compliance with regulations depend to a significant extent on an agent that can enforce those rules through a superior availability of material resources. Many consider the legitimate monopoly on the use of force even as a prerequisite for the existence of law at all (Kelsen 1966; Koskenniemi 2002; Chapter 6). This stance has been shown, however, to be empirically unwarranted. Good reasons can be advanced for the position that the traditional linkage of governance to a sanction-endowed, superordinate central body derives more from our traditional, retrogressive nation state view than from an analysis of post-national systems.

To begin with, law-like rules have a compliance pull of their own. It is therefore possible to envision beyond the nation state a community of law (Rechtsgemeinschaft) without a community of enforcement (Zwangsgemeinschaft), to use this early characterization of the European Union by Walter Hallstein.29 In addition, 'good governance' can often increase compliance with regulations without having to resort to enforcement at all. Moreover, compliance can be induced by a number of institutional features short of enforcement (see Chayes and Chayes 1995) since non-compliance by nation states is not always the result of deliberate cheating. Finally, the preference for hierarchical enforcement does not take into account the possibility of horizontal, reciprocal compulsion deriving from social interdependence. The European Union experience over the last decade has made it clear that governance with significant rule compliance is, in certain
circumstances, possible even without a force-equipped, hierarchically superior agent. In other words, the horizontalization of governance can be accompanied by a horizontalization of enforcement (Zürn and Wolf 1999). In rare instances, legitimate monopoly on the use of force can also be replaced by a hegemonic power distribution, in which one member state or a small group of member states has the resources and the authority to generate rule compliance as well as the willingness to do so.

Whereas the view that high rates of compliance are an absolute prerequisite for reliable social regulation has been shown as too extreme, the generation of compliance nevertheless remains a systematic problem for global multi-level governance systems. All of the alternatives mentioned for ensuring compliance depend on specific scope conditions. In the case of alternative mechanisms, such as legalization, legitimacy and compliance management, compliance depends on the willingness of a non-compliant actor to be responsive to good reason and concerns of legitimacy. In cases of non-hierarchical enforcement mechanisms, the enforcing actors need to be willing to bear the costs of enforcement, and the addressees of sanctioning and blaming need to be vulnerable to such strategies. Obviously these conditions do not always hold. As a result global multi-level governance systems are inherently selective vis-à-vis the implementation of norms and rules. This violates the fundamental notion of normative equality, according to which like cases should be treated alike, and thus undermines the social acceptance for such an order significantly (Zürn and Joerges 2005).

The second component of the two-step authority relationship refers to the delegation chain in global multi-level regimes. The individuals and societal groups which are most often the targets of regulation delegate the preparation of directives, justified on the grounds of the common good, to the level of the constituent member. Member states in turn delegate the authority further to the global level. Again, at least two potentially testable propositions follow from this feature of the global multi-level governance system. First, as a response to this lack of direct legitimation, global multi-level regimes tend to be increasingly inclusive in terms of participation and quite consensus oriented in terms of decision making. Second, as a result of this, global multi-level regimes tend to move slowly and are not able to take decisions vis-à-vis a strong minority. In other words, the responsiveness of multi-level regimes is not very high.

As long as the intergovernmental level was restricted to merely coordinating policies, requiring the consent of each member state, the two-staged process of legitimation was no problem. The decisions taken on the level beyond the constituent members were legitimated through the legitimacy of their representatives. With the rise of a multi-level system and the autonomy of the global level undermining the consensus principle, this has changed. There is an increasing need to legitimate decisions more directly in order to make the two-step authority relationship viable.

Free elections, discursive will formation, party systems favoring those parties that represent a broad range of interests and majority decision making are mechanisms that made political participation of broad segments of the public possible in the territorial state and through which legitimacy was transferred to the central decision bodies. Only through these mechanisms was it possible to strengthen and broaden the public interest orientation of democratic nation states during the nineteenth and twentieth centuries. Not only are such mechanisms lacking beyond the nation state – the level where most policies are formulated in multi-level systems of governance – they also seem to be partially
dependent on socio-cultural prerequisites such as political community identity (see Dahl 1994; Kielmansegg 1996; Miller 2006). Whereas it seems premature to categorically rule out transnational political communities, it can safely be said that they have not unfolded to their fullest extent.30 Broad political debates about political principles and the general direction a society ought to take occur only on the constituent member level. On the level beyond the nation state, at best sectoral or issue-area-specific publics arise.

Global multi-level regimes respond to this problem by developing two mechanisms. On the one hand, the roles of NGOs — that is, societal groups influencing international decisions directly by arguing mainly in terms of the global common good (as opposed to member interests) — is growing. The rise in the numbers of NGOs is dramatic,31 and their influence has grown in many global issue areas such as environment, trade and security.32 NGOs are an important element of sectoral publics, which help to connect the global level of regulation with the addressees of the regulations in the constituent members.

On the other hand, decision making in global networks often emphasizes consensus to an extent which goes further than formal procedures require. Even when majority decisions are possible, real-world negotiations seek consensus. Adjudication mechanisms also take great care to hear all addressees and to strike compromise if possible. There are very few direct interventions at the global level without prior consultation at the constituent member level. In this sense, the system is more autonomy preserving than some formal rules seem to suggest.33

However, this comes at a cost. Given this inclusive and consensual orientation of multi-level arrangements, it can be expected that global multi-level systems will be less majoritarian and less controlled by public interests than was possible in the national constellation. Moreover, redistributive and strongly interventionist policies will be more scarce, and policies will rely more heavily on market-compatible instruments and private agencies, since it is thus easier to achieve consensus on disputed issues (Leibfried and Pierson 1995; Streeck 1995; Scharpf 1996). This means global multi-level regimes tend to be slow and are hardly able to take decisive steps.

The lack of a central place for the coordination of different policies points to a third structural deficiency in the global multi-level governance system. We can again derive two expectations from this feature. On the one hand, global multi-level governance seeks to develop functional equivalents to the central coordination mechanisms of the nation state. On the other hand, given the structural features of the system, these functional equivalents are primarily the result of emergent processes and lack accountability.

There is no world government with a head of government who is responsible for coordination. Moreover, one of the major functions of a broad public — namely, to decide in cases of goal conflicts between different sectors such as growth and clean environment, or security and freedom — cannot be fulfilled by sectoral publics which, by definition, are tied exclusively to either growth, environmental protection, security or freedom. Given the functional and to some extent technocratic limits of such sectoral publics, there is a tendency to neglect the effects of regulations on other societal subsystems which are not part of the decision networks.

Therefore, the global multi-level governance system has produced some substitutes. There are international institutions which sometimes seem to play the role of a coordinating agent for all policies. The United Nations Security Council in particular has aspired to such a role vis-à-vis the goals of peace and human rights protection. Also,
the G8 and increasingly the G20 seem to define themselves by giving other international institutions a sense of direction and by taking up those pressing issues which are not sufficiently dealt with by existing international institutions. These attempts, however, have remained limited. Moreover, they generate resistance on the side of many other actors, because membership in these institutions is not only restricted, but also highly exclusive. The members of these institutions are self-nominated in the role as coordinator. These institutions therefore lack a broad mandate to fulfill the role of global governance coordination. The rise of transnational and national dispute settlement bodies points as well to the lack of coordination in the global multi-level governance system. While such adjudicatory bodies still rarely mediate between different global subsystems, they play an important role in the coordination between the global and the national level. The quantitative rise of such dispute settlement bodies indicates the growing autonomy of the global level, but also the lack of coordination between different sectors of the global level.

All three mechanisms available for coordination between different sectors – the United Nations Security Council, the G8/20 and the dispute settlement bodies – share two features. First, they are completely detached from societies. There are no formal and hardly any informal channels available through which societal actors can make these institutions responsive to their demands. Moreover, these institutions were in the first place not created for the purpose of coordination. They are probably the most emergent elements of an emergent order. Global governance therefore is troubled by a strange lack of subjects: something happens, but no one has done it (Offe 2008). If no one governs, however, no one can be made responsible. This lack of accountability of the global multi-level governance system is another source for the systematic deficit in the ability to gain social acceptance.

5.6 CONCLUSIONS

Global governance can be described as a multi-level governance system. The global level contains a sufficient degree of autonomy, and the interaction between levels is functionally differentiated. In this way, the rise of a global multi-level governance system seems to be the logical response to the process of societal denationalization. The advantages of such a governance system have not been systematically explored in this chapter, because they do not seem to differ much from those of federal systems. In the age of globalization, the logic of a multi-level polity is shifted to the level beyond the nation state. It connects domestic governance levels with levels of governance that lie beyond sovereign nation states, and thus has the potential to provide effective and legitimate policies in the age of globalization. It facilitates dual responses to both globalizing and localizing trends, and therefore respects the fact that while problems are global, political participation remains essentially local. The global multi-level governance system also permits more competition between different institutions as a means to finding the best solution to problems. By maintaining room for maneuver on the lower levels of governance, there is always the possibility to compare the success of different policies and to find different ways to implement central principles. The global multi-level governance system does not follow a rigid design. It is the emergent result of a permanently adaptive process between the different
levels, seeking at the same time the strengthening of central and local institutions. Given these advantages, multi-level governance arrangements seem to be without alternative and represent therefore the decisive component of the post-national constellation.

In this chapter, I have tried to identify the construction principles of the global multi-level governance system by comparing it to other multi-level systems in order to identify its specifics. It is those specific features – the lack of direct relationships between the higher level and the societies of the constituent members, and the lack of a location for the coordination of the policies – which cause the major deficits in global governance, namely, compliance problems, legitimacy problems and unrestricted sectoral externalities. Two questions follow from this directly: do these observations reflect structural deficits in multi-level systems of governance, or do they represent problems of transformation? And what can be done about this? Being skeptical about structural explanations and believing in the importance of social reflectivity, I tend to believe that civil society and public interests will in the long run find ways to bind multi-level governance more closely to the attainment of the common good. There are increasing signs that the institutions of the multi-level governance system are becoming politicized (see Zürn and Ecker-Ehrhardt 2009). People and societal actors are beginning to bring transnational and international issues into the public realm, which were previously handled by mainly administrative or technocratic bodies. International institutions are confronted with more societal resistance than ever, but they are also used more often by interest groups and non-governmental institutions. They are increasingly judged by political criteria such as legitimacy and fairness, in addition to efficiency and functionality – the yardstick of international affairs so far. In this sense, history is, as it always has been, open. If so, one of the most important tasks will certainly be to investigate the ways in which and the extent to which new ideas and intelligent institutional designs can be developed that help to avoid the inadequate attainment of governance goals in global multi-level governance systems.

NOTES

1. I want to thank Matthias Albert, Xinjuan Dai, Markus Jachtenfuchs, Fritz W. Scharpf, Thomas Rixen and especially Sonja Wälti for most helpful comments on an earlier draft.
4. See Krasner (1983, p. 3). See also Rittberger (1993) and Levy et al. (1995) for further elaborations on the definition of international regimes.
5. The distinction between international regimes and international networks is similar to the one drawn by Mayntz (1996) between networks for the management of ad hoc problems and institutions for the regulation of recurring problems.
6. The formal term is international governmental organizations (IGOs), as opposed to transnational non-governmental organizations (NGOs). The latter consist of any kind of professional association, for instance, the International Political Science Association, and also profit-seeking NGOs, that is, multinational enterprises.
7. See the data from the Union of International Associations that indicate a rise in the number of conventional NGOs from 5121 in 1996 to 7306 in 2005/06 (UIA 2009).
8. The concept of multi-level governance was developed in the context of the European Union. See Marks
9. The feature that the institutions beyond the nation state need before I assign them the status of a ‘level of its own’ is described as ‘powers’ in the theory of federalism (see the contribution to federalism in this volume by Geys and Konrad). In the principal-agent theory the relevant term is ‘autonomy.’ For an overview see Hawkins et al. (2006).
10. See Krasner’s (1988) distinction of different types of sovereignty.
11. Keohane and Nye (2002, p. 226) have used the term ‘club model’ to describe the procedural element of this system.
12. These figures derive from United Nations Treaty Collection (UNTC 2009), ‘Overview. Databases: status of multilateral treaties deposited with the Secretary-General,’ http://untreaty.un.org/English/overview.asp (accessed August 2009). The text here refers to a series of regularly updated publications, ‘Multilateral treaties deposited with the Secretary-General,’ which includes all of those instruments formally submitted to the Secretary-General, reflecting their status as regards, inter alia, signatures, ratification, reservations or objections.
13. Judicial, quasi-judicial and dispute settlement bodies have grown from about 20 in 1960 to about 80 today (Simmons 2009).
14. Nowadays, roughly two-thirds of the international organizations with major power participation entail majority or qualified majority voting (Blake and Payton 2008). A similar picture emerges with respect to international environmental regimes (See Breitmeier et al. 2006). See also Murphy (1994) for a long-term perspective on the development of voting rules in international organizations.
15. It is fair to say that a certain share of NGOs are exclusively or mainly concerned with the monitoring of international norms. Therefore, the rise in the number of NGOs indicates a rise of monitoring agencies. See especially Dai (2007) for an insightful elaboration of monitoring issues.
17. See also Haftel and Thompson (2008) who define the independence of international organizations as the absence of complete control by other actors and consider autonomy, together with neutrality and delegation of authority, as constitutive elements.
18. See Waltz (1979, p. 97); see also Albert and Buzan (2007).
20. It should be added that this focus on functional differentiation does not preclude the persistence – and even possibly the accentuation – of stratified differentiation between different territorial states (see Zürn 2007).
21. See the work of the Bremen research group on transformations of the state (Genschel and Zangl 2008).
22. Even in this respect, however, some notable changes have taken place (Genschel and Zangl 2008).
24. See Helen Wallace (1999) for a very useful distinction between five modes of policy development in the European Union, based on the relative importance of major actors, on the one hand, and the kind of policy in question, on the other.
25. ‘Authority relationship’ is an attempt to translate the Weberian term “Herrschaftsverhältnisse.” Authority in this sense is different from mere power or domination in that it involves an expectation on the part of the decision maker that those affected by a decision they make will obey it. This requires, therefore, that the decision maker be recognized as legitimate to some extent by the persons impacted by their decisions.
26. If the levels of dualist federalist systems would function completely independently – which never happens in the real world – it would not be, according to our definition, multi-level governance, since both levels would work independently of each other.
27. There are, however, notable exceptions to this rule such as the international administration of war-torn societies (see Heuvel 2009) and the International Criminal Court of Justice (Deitelhoff 2006).
28. These elements of MLG Type I are used by Mayntz (2001) to argue that the European Union differs fundamentally from global governance. See also Tümmler (2008).
29. See the discussion of these concepts in von Bogandy (1999, p. 53).
30. See Zürn (2000) for an argument along these lines and for further references.
31. According to the UIA (2009) the total number of NGOs rose from 36054 in 1996 to 51509 in 2005/06 (see note 7).
33. The famous comitology in the European Union highlights this point. In conjunction with more formal
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European Union decision making, a parallel apparatus has developed, which assures the participation of the member states in the implementation process (Joerges and Neyer 1997; Huster 2008).

REFERENCES


Joerges, Christian and Jürgen Neyer (1997), ‘Transforming strategic interaction into deliberative problem-


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