

# Taking the Law into Their Own Hands?

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Most international nongovernmental organizations (NGOs) do not have their own television shows, but Animal Planet's *Whale Wars* offers seven seasons of coverage of the Sea Shepherd Conservation Society. Sea Shepherd, an environmental NGO that engages in direct-action enforcement, was founded by former Greenpeace activist Paul Watson in 1977 as a group of eco-pirates aiming to shut down illegal whaling and sealing operations. As Watson has argued, "Governments are not enforcing the laws, so we have to."

Mette Eilstrup-Sangiovanni and J. C. Sharman begin their provocative new book with the story of Sea Shepherd, inviting us to reframe our understanding of NGOs' global activities. NGOs have received growing global attention from private donors, international organizations, governments, media, and corporations. Brand-name NGOs like Amnesty International, Médecins Sans Frontières, Greenpeace, and Oxfam run vocal advocacy campaigns and massive service-delivery efforts that keep them in the public eye. In fact, over the past two decades, NGOs have enjoyed higher levels of public trust than governments and media organizations, according to the Edelman Trust Barometer survey. Yet despite this prominence and trust, actual understanding of the vast population of NGOs and their many activities is rather thin.

NGOs do much more than lobby officials and deliver food aid. Many NGOs engage in investigations and support arrests and prosecutions in line with domestic and international laws. *Vigilantes beyond Borders* documents these enforcement activities in three diverse issue areas—human rights, environmental protection, and anti-corruption—and challenges the conventional

picture of NGOs as pleading or protesting do-gooders waiting for more powerful states to fulfill their responsibilities.

Historically, the authors note, the idea that states are the sole enforcers of laws is new: private enforcement of domestic law was the rule rather than the exception well into the nineteenth century. Nobel laureate and economic historian Douglass

North documented the essential role of private courts in the creation of transnational markets. In twelfth- and thirteenth-century Europe, private adjudication allowed merchants to travel and trade widely even in the absence of a state protecting their property rights. Private security also has a long history, from the Pinkertons in nineteenth-century America to today's Russia-based Wagner Group.

In the twentieth century, Max Weber's idea that the state claims a monopoly on the legitimate use of physical force within a given territory provided at least a useful fiction that reinforced the central role of the state in enforcing the law. The law has outpaced the state, however. Many domestic laws go unenforced by states that lack the will or capacity to act. Meanwhile, the rapid proliferation of international law across multiple issue areas has created a global enforcement gap.

Eilstrup-Sangiovanni and Sharman contend that this dense legalization, combined with new forms of technology and fiercer competition in a crowded field of NGOs, has led many groups to move well beyond advocacy and service delivery. Technical assistance to judges, information-gathering and monitoring, the filing of amicus curiae briefs, and the provision of legal services are all central to anti-corruption work and environmental and human rights protection. The authors argue that these NGO enforcement activities do not result from overburdened states delegating their work to private actors. Rather, these are self-directed and autonomous strategies intentionally selected by NGOs. These groups are either

## **Vigilantes beyond Borders: NGOs as Enforcers of International Law**

Mette Eilstrup-Sangiovanni and J. C. Sharman  
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frustrated by the enforcement gap or seeking to differentiate themselves from their brand-name NGO competitors that use more moderate advocacy and service-delivery strategies to maintain their access to corporations and states.

The idea of NGO enforcement is extremely useful as an additional category for analyzing NGO behavior, and the book offers many fascinating examples. The British NGO Bellingcat styles itself as an open-source online investigation agency, documenting human rights atrocities and probing money laundering schemes. The Netherlands-based Commission for International Justice and Accountability collects and analyzes evidence of alleged war crimes, serving as a proto-prosecutor for the International Criminal Court. ClientEarth, only a decade old, has 150 lawyers engaged in environmental litigation across Europe. This attention to the role of private citizens in law enforcement is welcome at a time when phone cameras help document police brutality and #YachtWatch invites Twitter users to help enforce sanctions against Russian oligarchs.

## MONITORS OR OUTLAWS?

Eilstrup-Sangiovanni and Sharman argue that their attention to NGO enforcement is not a mere recategorization of litigation and information-gathering strategies—behaviors that human rights scholars in particular have carefully documented. We might concede that advocating for the creation of new laws is much different from enforcing those laws. Still, the relationship between different enforcement strategies and the law needs unpacking, since NGOs like Sea Shepherd and Bellingcat do very different things.

Not all enforcement efforts are vigilantism. The authors define vigilantism as assuming the responsibility of investigating and/or punishing crimes because formal mechanisms of law enforcement are thought to be inadequate. Yet investigation is entirely in line with legal behaviors, whereas punishment might involve extralegal or illegal coercion.

Political scientist Regina Bateson helpfully distinguishes between “lawful vigilance” and vigilantism. As she writes, “The vigilant citizen who witnesses a theft and calls the police is not practicing vigilantism.” There is nothing extralegal about calling the police, Bateson points out, since this action reinforces the authority of the law

rather than going beyond it. In this way, much of the investigation and litigation conducted by enforcement NGOs is more Erin Brockovich than Batman—high-spirited and insistent data gathering and legal advocacy, not antisocial and violent disciplining of criminals.

Vigilantism involves breaking some laws in the name of enforcing others, as the authors note. Given the sometimes hidden nature of these actions and generally poor data on NGO strategies, it is hard to know whether NGO vigilantism is frequent or growing. Yet the very fact that some NGOs choose vigilantism is fascinating and raises questions about whether these behaviors are desirable and sustainable.

At the margins, NGO vigilantism may involve sensational or innovative tactics that draw attention to the enforcement gap in national and international law. For example, Global Witness was founded by three activists who dug a computer out of the trash, traveled to Cambodia, and used a secret camera and false identities as timber buyers to expose illegal logging by Khmer Rouge guerrillas. Beyond a certain threshold, however, growing vigilantism might erode the very laws that NGOs seek to enforce.

There are at least two troubling futures for a world of growing vigilantism. A first concern is that a system in which people feel justified to break some laws to enforce others leaves open the question of which laws are violable. Enforcement NGOs might defend themselves as protectors of public welfare—after all, NGOs are legally defined as organizations by their commitment to some public purpose. Yet which laws are really in the public interest, and which are merely procedural or second-order issues? Sea Shepherd argues that property damage is justified to enforce international conservation law, but this privileging of some laws over others is far from universally accepted.

Consider another example of vigilantism to protect animals. According to a 2019 report by Human Rights Watch, vigilante Hindu groups in India have beaten and sometimes killed dozens of people suspected of slaughtering cows. How do we assess the sacredness of cows in the Hindu religion against the right of humans to life and security?

This raises a second concern. At some point, growing private enforcement erodes the capacity

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or legitimacy of public authorities. The rule of law depends on the development of general and transparent measures that are then enforced equally—creating a sense of fairness. Proponents of vigilante justice might argue that the existing enforcement gap saps public trust in the law, but uneven and selective enforcement is not necessarily the way to restore that trust. A September 2021 *New York Times* editorial argued that the United States is becoming a nation of vigilantes, where elections, abortions, educational content, and immigration are monitored and enforced by private citizens. The possibility of growing private enforcement in an increasingly polarized polity suggests not mere augmentation of state powers, but rather a fundamental threat to state legitimacy.

Of course, these concerns about vigilantism—undertaken by NGOs or others—might be

overblown if such strategies are abandoned because they endanger organizational interests. At the US chapter of Sea Shepherd, Paul Watson was replaced in 2014 in what the group's new director described as a “complete change of direction.” This summer, Watson resigned from the board when it informed him that Sea Shepherd was stepping away from direct action campaigns. For some, this came as a relief. In a July 2022 issue of *Science*, fisheries expert Ray Hilborn described Sea Shepherd as “a bunch of lunatics conducting campaigns that were internationally criminal and a total waste of time.” Ultimately, whether NGO enforcement efforts actually achieve their ends—protecting the environment, advancing rights, or minimizing corruption—will determine whether these are sustainable niches in an increasingly competitive NGO landscape. ■