

Chapter 5

Thinking Tools and Central Concepts of the Theory of Contestation

Abstract This chapter proposes that based on the principle of contestedness (as a meta-organising principle of global governance) access to regular contestation at the referring stage ought to be warranted. This stage is sector-specific and therefore requires empirical research for identification. To illustrate this process, this chapter identifies the referring stage with reference to sector-specific organising principles that are derived from processes of policy-making. This application follows the definition of contestation as both indicative and required for legitimacy. Accordingly, the legitimacy gap is indicated by enhanced contestation (i.e. when taken for grantedness and moral value of a norm do not overlap). It is ‘space’ where normative meanings are contested in IR theories.

Keywords Regular contestation · Sectoral governance · Social recognition · Legitimacy gap · Normative meanings

The following recollects the substantive contribution of three related thinking tools which have been mobilised from public philosophy in order to derive the core concepts of the theory of contestation: first, the normativity premise, second, the diversity premise and third, the concept of cultural cosmopolitanism. These thinking tools were applied to facilitate critical investigations into International Relations theories. Each of these investigations enabled deriving the core assumptions leading towards the theory of contestation for international relations. These include first, the assumption that normativity is created through interaction at three stages of compliance; second, the assumption that normativity is generated through a multilogue and that activates cultural validations; and third, the assumption that regular contestation ought to be inserted at the intermediary level to fill the legitimacy gap, thus bringing the principle of contestedness to bear. The following addresses and recalls these assumptions in their turn.

As the first thinking tool, the *normativity premise* was developed in [Chap. 2](#). As a condition for a theory of contestation it held that normativity must be negotiable, and therefore explored whether and if so which approaches in International Relations theories allowed for negotiated normativity. To that end, it explored the conceptual allocation of the normative roots of norms according to four approaches

in IR theories, so as to be able to account for them in practice. With this reference to norms research in international relations it is possible to establish, which of the relevant approaches allow such a potentially problematic concept of contestation. Two criteria of distinction were applied to do this (compare Table 2.1). The *first* criterion raised the question whether an approach located normativity as theoretically ‘external’ or, reversely, as theoretically ‘internal’. The *second* criterion distinguished approaches according to their respective reference to a ‘community ontology’ or a ‘diversity ontology’. The former take the formal validity of a norm as indicative for rule-following, as both Rawls and Habermas would expect, despite their different concepts of justice. The latter considers rules as being constituted through social practices under condition of social patterns or diversity. Based on these criteria chapter two established which approach to norms advanced a *constitutive understanding of normative practice*.

As a result, it was noted that the critical regimes approach and the critical constructivist approach respectively, where most conducive towards allocating configuration about normality, thus offering a practice-based understanding of *negotiated normativity*. In addition two approaches have been singled out: The *first* is the “arguing global governance” approach, which was developed by Bjola and Kornprobst (2011). This approach builds on the deontic theory of John Searle rather than on Kant’s “objective catalogue of duties” in order to demonstrate the constitutive power of language, for “Searle’s understanding of deontology, by contrast (to Kant, AW), is much broader and thoroughly intersubjectivist” (Bjola and Kornprobst 2011: 11). In doing so, it adds a practice based normative dimension to the constitutive quality of language, which has been developed in particular by consistent constructivist approaches (Fierke 2010). The *second* is the “re-/enacting normative structures of meaning-in-use” approach, which applies the Derridian method of deriving oppositions within a given societal context (Milliken 1999) in order to account for the normative structure of meaning. Again, this approach conceptualises normative meaning as, in principle, subject to change through cultural practice (i.e. everyday practice that validates the meaning of a norm, principle or rule according to experience that forms expectation). It thus allows for a conceptual distinction between cultural validation as an individual practice, on the one hand, and mutual recognition as a social practice, on the other.

The subsequent Chap. 3 developed the *diversity premise* as the second thinking tool. It advanced the assumption that under conditions of globalisation and in the absence of wholesale transnationalisation, inter-national relations must be understood as inter-cultural relations. It concluded that inter-cultural interactions must be considered as the sources of distinct normative claims. Accordingly the diversity premise reflects the impact of cultural validation. Based on the first two thinking tools, it was concluded that, in light of normative meanings, which are subject to change through communication, norm implementation is to be considered as—in principle—problematic. This problematic understanding of norms follows the range of critical norm research in international relations, which demonstrated how and why normative meaning is contingent.

As an intersubjective process, discursive interaction draws on resources, which have been created prior to the negotiating and/or bargaining situation. Communicative action thus not only contributes to the social construction of norms but also reconstructs sociocultural patterns of the life-world. As such, it has a constructive impact both within modern societies and beyond them. If communicative action is conceptualised as intersubjective, it potentially produces “new values” in the process of deliberation (Müller 2001: 173). The challenge for norm research in international relations consisted in addressing the way in which these new values need were actually communicated beyond the relatively close circle of negotiators. For example, in the sector of security governance these would most likely be a group of selected elites. Studying the meaning of norms in a comparative perspective, then, would generate a better understanding about how out-of-context norm interpretation (and conflict) works. In other words, it is suggested that the transfer of normative meanings sheds light on the link between the negotiating actors and their communities of origin. In further elaboration of the theory of contestation, it is argued that by providing access to contestation the conflictive potential of contested meanings can be mobilised for legitimating purposes. This focus on the role of inter-action through language has been addressed widely by the linguistic turn in International Relations theories and in Public Philosophy, respectively.¹ It follows that, unless the normativity premise is considered in relation with the diversity premise, the contingent quality of normativity remains theoretically bracketed. Subsequently, and paradoxically, given that contestation is an *interactive* practice, the mutually constitutive outcome of contestation remains outside the remit of these theories. In sum, the unproblematic conceptualisation of contestation is unable to capture normative change, let alone, to explore contested meanings, which are generated *through* inter-national relations as a set of individual and therefore culturally diverse practices. This shortcoming, in turn, misses constitutive changes *in* International Relations theories. To reverse that paradox, the theory of contestation establishes a platform from which the constitution of normativity in international relations can be addressed.

And Chap. 4 has derived the concept of *cultural cosmopolitanism* from public philosophy as the third thinking tool. Cultural cosmopolitanism summarises the norm-generating force of cultural practices and its impact on the changing norms of political order. It was argued that the concept of cultural cosmopolitanism facilitates address the ‘legitimacy gap’, which emerges between fundamental norms and standardised procedures at the intermediary level. That is, it works with the assumption of contested normativity and accordingly the demand for access to participation in regular contestation is considered as the meta-norm of global governance, which must be respected in order to establish and maintain legitimate and fair governance in the global realm (Tully and Gagnon 2001), generally

¹ Compare work on the Wittgensteinian language game to bear in order to explain or call for ‘rule changes’ in any type of normative order: See Fierke (1998, 2010, 2013), Onuf (1989, 1994, 2013), as well as Tully (2008a, b).

speaking. How this meta-norm plays out in practice, depends on the institutional procedures and the relevant practices of politics and policy-making within each sector of governance. That is, quite in accordance with the notion that the practice is a “thing and a process” (Onuf 1994) the normative quality of contestation is read off the very interactive practices in these respective sectors of governance (Onuf 1994), on the one hand, while it is normatively negotiated through this practice (Taylor 1993), on the other hand. To establish how the meta-norm of the principle of contestedness plays out in distinct governance sectors in the global realm, empirical research is required. The last section will provide two explorative examples to demonstrate how such research may be operationalized. Prior to that, the following section details the institutional approach to regular contestation with regard to the legitimacy gap in international relations.

5.1 Organising Principles

To conclude the two-tiered argument about the central role organising principles play in filling the legitimacy gap of global governance, this chapter demonstrates how to apply the theory of contestation with reference to selected sectors of global governance. To that end, it begins by recalling the three concepts indicating the place of negotiated normativity, which is indicated by organising principles in global governance according to the theory of contestation. They include, first, the *practice of contestation* indicating the legitimacy gap between publicly shared fundamental norms and highly contested standardised procedures; second, the *principle of contestedness* warranting access to contestation for involved stakeholders, and resulting from the former two, and third, the *policy instrument of regular contestation*, which stands to be facilitated at the referring stage in order to confront the legitimacy gap. All three have been identified through recourse to the three thinking tools, i.e. the normativity premise, the diversity premise and the concept of cultural cosmopolitanism, which have been developed with reference to the social science and public philosophy literatures, respectively. The remainder of the chapter proceeds to allocate the practice of ‘regular contestation’ on the intermediary level of the norm-type scale, as an option to counter political contestation in politics and policymaking under conditions of inter-national relations.

To fill the legitimacy gap, this section proposes establishing contestedness as a meta-organising principle (i.e. a *type 2* norm) at the intermediary level of governance. Accordingly, it is proposed that International Relations theories conceptualise the legitimacy gap that is indicated by enhanced contestation in a situation, which emerges in most situations when inter-national relations are acted out in the absence of the overlap between formal validity and social recognition of a norm. Subsequently, the legitimacy gap is conceptualised as the ‘space’ where normative meanings are contested. As it has been argued with reference to the three thinking tools, this is where contestation is to be expected in actual inter-national relations for two reasons. First, according to the normativity premise, normative meaning is

re/enacted with reference to distinct normative baggage of the involved actors. Second, according to the diversity premise the encounter of these diverse agents unfolds under the condition of inter-nationality. This interaction is likely to generate of contested normativity, which is enhanced by the legitimacy gap between fundamental norms and standardised procedures. By bringing in the concept of 'cultural cosmopolitanism' as the third thinking tool this legitimacy gap has been conceptualised as the analytical 'space' where meanings stand to be contested. If organising principles are constituted through policymaking and politics, this is where normativity ought to be negotiated. This conceptual framework of the theory of contestation allows for a number of policy options, which will be explored in some detail below. Among them is the suggestion to include a stage in the policymaking and/or political process, where contestation be practiced on a regular basis by all potential stakeholders. By inserting this stage of regular contestation, it is argued, conflictive outcomes as unintended consequences of political contestation can be pre-empted. The legitimacy gap thus matters in particular, for it denotes the space where the cultural diversity of agents (understood as diverse *qua* inter-national distinction) and the diversity of normative meanings-in-use are brought to bear through intersubjective practice (Kratochwil and Ruggie 1986; Kratochwil 1989).

While this is the moment where conflict is expected in the actual politics of inter-national relations, the *theory of contestation* holds that, if implicit or explicit political contestation were to be channelled into regular contestation, conflict could be avoided. By inserting this institutionalised mechanism contestation could target misunderstanding and disagreement and therefore prevent contested compliance from turning into conflict. To demonstrate how this strategic application of contestation is likely to work for the purpose of legitimating fundamental norms in a context where the contestation of meanings is expected *per se* (i.e. notwithstanding the distinction between strategic political contestation or spontaneous habitual contestation), the proposed institutional adaptation of contestedness is explored with regard to three selected sectors of global governance below.

In a subsequent step it is suggested to conceptually locate the legitimacy gap on the *intermediary level* between meta-level norms and micro-level norms. The gap may be allocated in a range of distinct areas of governance including, for example, environmental governance, resource governance or fisheries governance. Compare, for example the norm of sustainability (defined as sustainable use of resources in the global commons), on the one hand, and the rejection of standardised procedures, say emission standards or fishing quotas (defined as standards, regulations and procedures), on the other, which have been agreed in order to implement the appropriate standards through specific policies. The work of norms on the intermediary level will be illustrated with reference to three sectors of governance in section three of this chapter.

Conceptually, the proposed link between fundamental rights (i.e. as *type 1* norms) and standardised procedures (i.e. as *type 3* norms) allows for innovative ways of thinking about solutions to the problem of contestation that has been brought to the fore by instances of contested compliance. In order to fill the gap, it is

Table 5.1 The principle of contestedness and the legitimacy gap

Norm	Contestation	Legitimacy
Type 1	Low contestation	Shared recognition
Type 2	<i>Regular contestation</i>	<i>Legitimacy gap</i>
Type 3	High contestation	Potential conflict

suggested to turn to organising principles (i.e. the *type 2* norms), which provide a link between the moral claims attached to fundamental norms on the one hand, and the practical enactment of standardised procedures, on the other. It is argued that, while material factors such as resources and power are always a component in the decision to implement rules, social factors such as culture and experience matter for the degree of social appropriateness of a norm as well as the actual individual commitment to implement the relevant rules and regulations. Different from morally grounded fundamental norms and specific standardised procedures, organising principles emerge through contestations in the process of conflictive deliberation about the implementation of fundamental norms such as sustainability, human rights and non-intervention (for a listing of the three distinct norm types). The organising principles that were generated and agreed upon by UN member states through contestations in specific circumstances, such as for example, environmental summits have contributed to define commonly agreed ground rules such as the principles of ‘common but differentiated responsibility (CBDR)’ or the ‘responsibility to protect (R2P).’ While remaining contested over the years, to be sure, these ground rules have provided a platform from which to approach future decisions in these respective policy sectors through regular contestation.

Given that organising principles are usually practice-based, that is, they evolve from the “ground up” (Forman and Mackie 2013: 152) through interactive processes of policy-making and politics, they form an important link between fundamental norms and standardised procedures. While standardised procedures are required with a view to implementing specific fundamental norms of a given political order through policy measures or political procedures, they are at the same time, often subject to contention, for they usually constrain the options of the designated norm-followers. Examples where the principle of contestedness would provide a helpful step towards keeping the potential for conflict low include the business sector, which regularly operates on the basis of multinational corporations (Park and Vetterlein 2010) as well as the range of international policies including foreign policy, defence policy, security policy and so forth. With regard to the business sector, consider for example companies such as that regularly include operations in a number of different countries (compare Table 5.1).

As contestation research has shown, inter-national encounters are expected to generate contested interpretations of norms, for the normative structure of meaning-in-use that informs that interpretation and hence the predisposition of whether or not a norm is considered as appropriate, differs according to individual socio-cultural background experience (Wenger 1998; Hofius 2013). In the following three explorative examples are discussed in order to identify such instances of potential conflict and how they can be prevented by ‘turning them on their head’

Table 5.2 Reconstructing organising principles of global governance

PART 1: Mapping contestations (macro- and meso-levels)		PART 2: Derive norms (intermediary level)	
<i>Implementing Stage</i>	<i>Constituting Stage</i>	<i>Referring Stage</i>	<i>Filling the Legitimacy Gap?</i>
Indicator: Contested <i>type 3 norms</i>	Indicator: Contested <i>type 1 norms</i>	Indicator of shared legitimacy	Answer: Research question
Map:	Reconstruct:	Reconstruct:	Compare:
Contestations of <i>type</i> <i>3 norms</i>	Contestations of <i>type</i> <i>1 norms</i>	Emergence of <i>type 2 norms</i> (organising principles)	<i>Type 2 norms</i> in selected governance sectors

Source Adapted from Wiener et al. (2012)

(i.e. by adding regular contestation as an additional step in the policy process of a given governance sector). The examples of contested norms of governance include the sector of climate governance and the sector of security governance. Each situation will be addressed in their turn below. In practice, the following sketches how an empirical research design could benefit from the theory of contestation (compare Table 5.2) with regard to research operationalisation in order to conduct empirical research.

To shed light on the legitimacy gap as the space where contestation is expected the empirical research is operationalized within two broader parts. *Part one* includes the selection of cases in specific governance sectors, such as, for example fisheries governance, security governance, environmental governance and so forth. And *Part two* includes the process of deriving norms at the intermediary level. The two parts include four distinct empirical steps (compare Table 5.2). Step one consists of mapping contested meanings of fundamental norms at the meta-level, step two reconstructs organising principles which are generated through international inter-actions, step three compares these organising principles over time and with reference to different cases, and step four derives the organising principles at the intermediary level. More in detail empirical research is likely to focus on a range of case studies in the selected policy sector and involves discourse analytical methods applied to interview data and policy documents in combination with ethnographic approaches such as participant observation.

This empirical research should include interviews and observation of processes of norm interpretation and implementation in conjunction with knowledge production and translation within and between policy communities, inter/national bureaucratic settings as well as academia and non-state advocacy groups such as non-governmental organisations. The case studies will then reconstruct the resulting organising principle with reference to the process of negotiating normativity and based on the knowledge within and across the cases' respective arenas. The focus of these case studies will be set on background experiences that inform

the way normative meaning-in-use is re-/enacted with regard to the leading fundamental norm of a specific governance sector. The term ‘sector’ rather than ‘epistemic community’ has been chosen to reflect the diversity—as opposed to commonality—which sets the conditions of compliance in most sectors of global—as opposed to local or national—governance. Through this reconstruction of the cultural validation of normative meaning it becomes possible to identify contested meanings. This allows for inductive conclusions about organising principles constituted through interaction, which matter for each case, and which stands to be compared *within* governance sectors. Finally, empirical research stands to link the findings and transfer them back to the global governance literature to conclude with an interactive account of governance in the global realm.