

# The Problem of Non-compliance

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# **The Problem of Non-Compliance**

## **Knowledge Gaps and Moments of Contestation in Global Governance**

How do we account for norm (non-)compliance in complex situations of global governance? Instead of emphasising power and diverging interests, this research note develops an innovative framework by arguing for a need to account for the social foundation of norms and the processes of norm contestation amongst relevant stakeholders. It comprises three crucial elements: first, the relevant stakeholders that form around specific policies; second, the types of knowledge about the policy object at stake; and finally, the knowledge gaps across stakeholders and their strategies to overcome them. Based on these considerations we advance a framework of three pillars of ‘vested interests’, ‘vice’ and ‘virtue’: given, first, the diversity of stakeholders in policy-making and their vested interests, we assume, secondly, an increased likelihood for norm contestation. For some this constitutes a vice. However, we argue, thirdly, that open deliberation has the potential to lead to positive implications for governance arrangements and is therefore a virtue for norm compliance. Applying this framework to the example of the use of outer space, we show how our approach can address what we call the ‘lasting reality’ of global governance, namely the regular confrontation of culturally embedded normativity that stems from the increased diversity of actors in the global realm.

**Keywords:** global governance; norms; contestation; normativity; legitimacy; knowledge

### **Introduction**

How do we account for norm compliance, or non-compliance for that matter, in complex situations of global governance? Many fundamental norms such as democracy, human rights, the rule of law and sustainability, appear widely agreeable at a first glance, given their stipulation in treaties, conventions or agreements (Koh 1997). Then again, they are however often violated, either by breaches of these norms on behalf of the very signatory of these agreements, or, on behalf of a plural set of agents who are expected to implement them ‘on the ground’. This is not surprising. For, as the Chayeses have noted early on, the more specific and technical standards at the stage of implementing norms on the ground are likely to trigger contestation (Chayes and Chayes 1993). Taking the compliance literature further, social constructivists have argued for a “richer view of the law” to account for the social context of norm implementation (Finnemore and Toope 2001). Rather than focusing on ever more specific details based on analysing stages of “legalisation” (Abbott, Keohane et al. 2000), this richer view decidedly places the interpretation of the law within the wider social environment where agents interact.

This research note builds on this insight and seeks to flesh out the methodological implications of a contextual constructivist approach to compliance. To that end, we focus on the process covering the space between the stage of norm constitution, i.e. in treaties, or agreements, on the one hand, and the stage of norm implementation on the ground, on the other. Following Park and Vetterlein, we conceive of this process as the practices that contribute to the translation of fundamental norms into “policy norms” (Park and Vetterlein 2010). We propose a research framework that moves beyond predominantly interest-based explanations of the problem of (non-)compliance. To that end, we draw on agonistic approaches in the growing field of norms studies which perceive of contestation as a virtue rather than a vice (Tully 2002, Mouffe 2008, Wiener 2014). We argue that, as a social practice, contestation helps accounting for the social foundation of norms through interaction in context. This is achieved by focusing on the very process of norm contestation amongst affected stakeholders. Contestation is triggered by objection to breaches of fundamental norms, or by differences with regard to perceived normative meanings (Wiener 2014, Wiener 2018). To take the constitutive force of contestatory practice into account when studying compliance, it is key to move norms research out of the “positivist” corner which implies an opening towards “more interpretive strains” (Kratochwil and Ruggie 1986: 766).

To do so, we particularly address two aspects in current norm studies that warrant further discussion. These include, first, the assumption that strategies of norm diffusion are legitimated by universal rather than context-based validity claims (Kratochwil 1984); and second, and relatedly, the often insufficient problematisation of groups of affected stakeholders who are engaged in norm contestation *in situ* (compare Zimmermann 2017 for an exception). Accordingly, we suggest that a spatio-temporal distance between identifying fundamental norms at the constitutive stage (i.e. in international treaties, conventions or agreements) on the one hand, and implementing these norms by means of specific policies at the implementing stage (i.e. in distinct locations in sub-unites of global society), on the other.

While fundamental norms may be agreed to by way of signing treaties and therefore, appear to be universally shared, we highlight that international politics is marked by a diversity of affected stakeholders. Given the plurality of affected stakeholders on a global scale, their *in situ* interaction with norms and about norms at the stage of norm implementation is expected to generate “contested compliance” (Wiener 2004).

We term this a situation of norm contestation based on the diversity of practical knowledge these different actors hold. And we argue that, in order to understand why actors do or do not comply with norms, it is necessary to recall how policy norms (Park and Vetterlein 2010) come about through interactive engagement in politics and policy-making at the meso-scale of global governance. It is this interactive engagement, we hold, that eventually enables IR theory to assess the legitimacy of global governance norms by taking the plurality of diverse affected stakeholders into account. To that end, it is vital to address the spatio-temporal distance between the stages of norm constitution at the macro-scale and norm implementation on the micro-scale of global society. The suggested approach initiates research at the micro-level of global governance where affected stakeholders either contest breaches of fundamental norms, or engage in contestation about distinct interpretations of normative meaning. These contestations are informed by background knowledge that is re-/constituted through everyday practice.

To assess the effect of this knowledge in situations of norm contestation, the proposed approach is knowledge-based and focuses on the identification of three elements: first, the groups of affected stakeholders that engage in contestation of norms regarding a specific policy sector; second, the types of knowledge with relevance for the policy object at stake; and finally, the difference in background experience that generates knowledge gaps among stakeholders and the strategies which are developed to overcome them. Based on these elements, we advance the following assumption that centres on the three pillars of vested interests, vice and virtue: given the diversity of affected stakeholders and relatedly the distinct

background knowledge, or *vested interests*, that informs their perception of norms, we expect an increased likelihood for norm contestation. While for problem-solving approaches to compliance, this constitutes a *vice* which needs to be overcome (e.g. by blaming or shaming), by contrast, we argue, that contestation constitutes a *virtue* insofar as it is as an indicator for difference, either in the perceived meaning or of breaches of norms.

When triggering open deliberation among affected stakeholders, contestation has the potential to generate shared meanings. As such, it has positive implications for governance arrangements. It is therefore, in principle considered a *virtue* for research on norm (non-)compliance. The argument about the virtue of norm contestation is derived from agonistic approaches that devise legitimacy from contestation as an interactive practice (Tully 2002). It follows that the re-constitution of normative meaning through practice is a crucial precondition for compliance with norms in global society. We seek to demonstrate that such interaction is most likely to occur in processes of politics and/or policy-making. This negotiating stage is therefore considered as the social environment that is most favourable to generate shared background knowledge vis-à-vis fundamental norms. This has been especially noticeable with regard to the wide-ranging ‘responsibility discourse’ in global governance. To exemplify the proposal for a new approach to global governance we refer to responsibility in the remainder of the article.

Responsibility has become an established topos in several governance sectors. CSR has been on the rise as a policy tool to hold corporations accountable for their doings (Dashwood 2014). R2P releases a nation-state of its charge (in the third pillar) and instead assigns responsibility to international organizations in the name of human rights to which a majority of other states, the international community, has agreed (Bellamy 2008, Welsh 2011, Karp 2014, Gaskarth 2015, Gholiagha 2015). And the CBDR principle which has played a role in climate governance negotiations subsequent to the Kyoto Protocol assigns states responsibility for the sustainable use of natural resources (Scott 2009, Brunnée and Toope

2010). The overlapping responsibility discourse in these governance sectors illustrates the concept's increasing weight in global governance (Daase, Junk et al. 2017, Debiel, Finkenbusch et al. 2018). But what is even more important here, and the reason why we have chosen to focus on responsibility in this research note, is the fact that responsibility greatly emphasizes the underlying values of norms and therefore, relatedly, the normativity of politics. In times of global crises, be they financial, religious or others, questions of morality and ethics are evoked. For instance, most of the banks have acted in perfectly legal confines during the financial crises, that is, they complied with regulations and law, and yet, we now talk about a code of ethics for bankers.<sup>1</sup> These issues reveal that policy norms such as standards and regulations are inherently normative (Kjaer and Vetterlein 2018) and that in order to understand global governance and find answers to pressing questions of norm compliance we might need to engage with ethics and morality, too. In this research note, we therefore suggest that the responsibility norm and its enactment or non-enactment in different sectors of global governance provides a fruitful testing ground for the framework we sketch in this note. Instead of focusing on well-studied and –documented cases such as R2P or CSR, we chose to illustrate the proposed approach with reference to ‘outer space’. As a sector of global governance it has been gaining in importance as it is being discovered by both private and state actors alike as a resource-rich environment. In addition to not being studied too much, this case is particularly valuable as a ‘typical case’ (Palinkas, Horwitz et al. 2015) that can illustrate what we would like to highlight in this research note.

The remainder of the research note is organised in three sections. In section one we introduce some aspects of current exploration of outer space. Private actors as well as states approach it from very different vantage points, which serves as a reminder that assumptions about universal validity in global governance are difficult to uphold. Accordingly, in section two we highlight the limitations of interest-oriented approaches that consider compliance a vice and propose focusing on contestation as a virtue instead. In section three, we elaborate on

the methodological framework reflecting this preference based on the analytical tools of processes of contestation and knowledge gaps. We contend that through this novel focus on knowledge production and transfer through norm contestation helps overcoming the gap between constituting norms at the macro-scale and implementing them at the micro-scale. In the best-case scenario, these meso-scale contestations generate shared policy norms. In the well-known examples of climate governance and humanitarian law they are known as organising principles such as CBDR or R2P, respectively. In a nutshell, the research note suggests that a more robust methodological focus on contestation offers a novel way for norms studies to account for actor diversity in relation to sustainable normativity in world society.

## **Responsibility in Global Governance: Outer Space**

In addition to the well-researched sectors of climate governance, humanitarian law security governance, a novel area where contestatory practices based on competing knowledge claims emerge, is outer space. In this research note, we use it purposefully as a typical case in order to illustrate the conceptual intersection between compliance and contestation. For it is at this intersection where the ways in which actors who are supposed to make sense of a normative context act upon, interpret and contest norms. In fact, we seek to show how in situations of contested compliance, norm changes on the ground occur, thereby reflecting diverse background knowledge that a plurality of affected stakeholders bring to the contestation. The United Nations Office for Outer Space Affairs (UNOOSA) has been “responsible for promoting international cooperation in the peaceful uses of outer space”, which includes implementing the Secretary-General’s responsibilities under international space law, maintaining a register of objects launched into outer space, preparing and distributing reports, studies and publications on space science, technology applications and space law.<sup>ii</sup> It serves as the secretariat for the Committee on the Peaceful Use of Outer Space (COPUOS), which



works through a legal as well as a scientific and technical subcommittee. Put simply, it is in that context in which space law and all related normative regulations are negotiated and developed.

The Outer Space Treaty (United Nations 1967) constitutes a global framework of human conduct in space with regard to shared responsibilities. It has provided a legal basis with regard to exploration as well as use of resources since 1967 when it was signed simultaneously in Washington, Moscow and London (Lachs 1992: 291). It puts forward legal principles governing activities of states where outer space and celestial bodies including the moon “were declared not subject ‘to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means’” (Ibid: 296). For some time, outer space was treated as a “common heritage of mankind” similarly to global oceans (Pardo 1967, Ostrom 1990), even though evolving legal frameworks with regard to these two realms have resulted in slightly different trajectories of the term (Lachs 1992: 298). What matters for our argument is that the Outer Space Treaty establishes an explicit link between international law and state responsibility when it holds in Article VI that, “States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty.” In 2016, states agreed that they have a responsibility for state and non-state actors alike with regard to ensuring long-term sustainable use of outer space (United Nations 2016). Therefore, the general benefit for humankind lies in preventing an arms race in outer space (United Nations 2016: 2, 4).

Yet despite the various legal frameworks and resolutions that are in place, we are witnessing diverging opinions between stakeholders, policy makers, and academic experts concerning outer space. These diverging opinions about questions of responsibility and ownership have come to the fore particularly in light of efforts in the US to create coherent

national space policies and to devise a legal framework for private enterprises in space, which has been raging ever since the 1979 Moon Treaty, which the US has not ratified to date. While the Moon Treaty sought to declare all celestial bodies and their natural resources as the “common heritage of mankind”, the use of which should be subject to an international regime (United Nations 1979: art. XI, para 1 and 5), scholars have long-since warned that this would not be in the interests of US enterprises and therefore not in the national interests as it would introduce uncertainties and risks for private investments in space (Dula 1979, Hoffstadt 1994, Cook 1999).

Indeed, the state perspective has been ambivalent and subject to change over the course of three decades, which is illustrated by the state’s changing positions towards the question of militarization. Since the early 1980s, China and Russia have attempted to push for a “Prevention of an Arms Race in Outer Space” (PAROS) in the United Nation’s Conference on Disarmament (CD) (Gallagher 2010: 266). But given the requirement by the CD to proceed by consensus (Blake and Imburgia 2010: 192) and the United States’ insistence that no arms race in outer space was taking place (Kuplic 2014: 1157), and thus there was no need for an agreement (Gallagher and Steinbruner 2008: 41), progress on PAROS was impossible. While this denial of a need for an agreement has been a consistent position, different US governments held different vantage points regarding space. The GW Bush administration opposed “new legal regimes or other restrictions that seek to prohibit or limit US access to or use of space”, President Obama announced the administration’s willingness to “consider proposals and concepts for arms control if they are equitable, effectively verifiable and enhance national security of the United States and its allies” (quoted in Kuplic 2014: 1157). Space policy under Obama was still marked by contradictory approaches that would emphasise simultaneously sustainability and securitization (Gallagher 2010). Yet the pendulum seems to have swung in favour of the latter recently, as President Trump announced the possibility of adding a “Space Force” to the US Navy, Army and Air Force

(Wilkie 2018), which echoes the argument made by SPACECOM lawyers for quite some time (Gallagher and Steinbruner 2008: 42).

Meanwhile, concerns by businesses seem to have finally been calmed by the recent SPACE act, which became law in the United States on 25 November 2015 (Congress 2015). Politicians such as Congress's Majority Leader Kevin McCarthy welcomed the bill as reducing insurance costs for companies while lauding US achievements in technology and science that could thrive in a "spirit of freedom", for which the bill would pave the way.<sup>iii</sup> Stakeholders, such as enterprises Planetary Resources, an asteroid mining company, or Deep Space Industries, contrast these statements with a different narrative twist. They hold that the bill establishes the "right of US citizens to own asteroid resources they obtain and encourages the commercial exploration and utilization of resources from asteroids" (Planetary Resources 2015). Statements such as these ignore that the bill closes with a disclaimer in section 403, according to which,

"[i]t is the sense of Congress that by the enactment of this Act, the United States does not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any celestial body."

The discrepancy between the companies' position, politicians' views and the terminology of the bill raises questions which legal experts, as a third group involved in the process, have also commented on. Again, perspectives diverge: While some, like law professor Ram Jakhu, point towards the provisions of the Outer Space Treaty and emphasise that commercial use of asteroids is prevented, other legal scholars, like Ricky Lee, hold that companies have been using orbital space for commercial use, for instance through geostationary satellites, for decades or question whether the term "celestial bodies" actually includes small asteroids (CBC News 2015).

While this complication of definitions raises questions about US policy-making, responsibility for outer space is a governance concern that reaches further than different vantage points held by US politics and US-based companies, respectively. The

accommodation of different vantage points is a global issue and current practices around the globe raise core questions for researchers interested in the ways in which humanity organises global public goods (Commission on Global Governance 1995, Rosenau 1995). For example, in the context of outer space, China is organising a sample-return mission to the moon to take place in 2019, which would be the first of its kind since a Soviet mission in 1976.<sup>iv</sup> It is part of a decade-long open-ended programme organised by the multi-disciplinary State Administration of Science, Technology and Industry for National Defense. At the same time, India has developed an ambitious commercial programme to launch satellites of both state and non-state actors. In February 2017, India's Space Research Organization (ISRO) launched a record-breaking 104 satellites in a single take-off.<sup>v</sup> The ISRO is also planning a new lunar surface mission for 2018, comprising an orbiter, lander, and rover configuration, which follows from the much-celebrated first mission in 2008.<sup>vi</sup> As a response to the annual call by COPUOS to inform about space activities, Germany emphasised public-private partnerships in setting up an ideas competition for a new space economy, as well as highlighting medical experiments to investigate the effects of microgravity on blood vessel cells, instruments to document climate change, space-based technology for disaster management, among others (United Nations 2016). Luxembourg, by contrast, places more emphasis on its thriving space sector, a third industrial revolution that may occur in space. Although aiming to contribute to the "peaceful exploration and sustainable utilization of space resources for the benefit of humankind", the country's statement clearly aligns with the entrepreneurial spirit of US private companies, when it states that

"Raw materials from space, to be used in space at a relatively low cost, can make current satellites more capable and less expensive. Once a supply chain of materials is established in orbit, it will encourage new applications and new business models as entrepreneurs attempt to introduce even more services that people on Earth find useful." (Ibid: 5)

Obviously, responsibility for outer space and its sustainable use for the benefit of all means different things to different actors. At a more general level, this illustrative example raises

questions about three issues that we seek to address. First, it is possible to identify a number of stakeholders who all attempt to frame responsibility for outer space policy from different angles, for example as an investment opportunity, as a space for exploration, or, as an object that is somehow globally owned. Second, these angles are approached from different knowledge positions. For instance, there is the legal notion of outer space as a realm of ‘common heritage’, which contrasts with the view that celestial bodies can become mining sites for resources that are rare to find on Earth. Third, it becomes clear that in order to understand the normative effect of ‘contested compliance’, gaps in knowledge that exist between stakeholders and their respective vantage points provide important information about how ‘contestation’ plays out. What is more, these gaps help identify the conditions that would facilitate closing these knowledge gaps. The latter, we argue, will enhance compliance based on normative change.

### **Vested Interests, Vice and Virtue: Actor Diversity, Contested Compliance and Sustainable Normativity**

A major part of the current global governance literature on norms and regulations suffers from either of two shortcomings: Either norms are studied in isolation from ‘process’, i.e. emphasising vested interests of individuals, or, they are considered as closely interrelated with social construction, i.e. emphasising behavioural change. Instead, we suggest that the interrelation of structure and agency that is allocated in the practices of norm contestation is key to examining the effect of contested compliance on legitimacy in global governance.<sup>vii</sup>

With regard to these shortcomings, norms are treated in terms of cost-benefit calculations. This research has addressed compliance with regard to both general normative principles as well as standardised procedures. Addressing the macro-scale, norms are discussed regarding their effect on state behaviour as well as their isomorphism and robustness, which in turn is generated through state behaviour. Common case scenarios focus

on human rights, the ban on nuclear weapons, the ban on landmines, torture prohibition, democracy or the rule of law (Risse, Ropp et al. 1999, Price 2003, Bower 2017, Zimmermann 2017). This liberal constructivist literature defines norms as standardized rules and procedures that are recognised by actors in a community with a given identity (Jepperson, Wendt et al. 1996, Katzenstein 1996, Finnemore and Sikkink 1998, Boerzel 2001, Raustiala and Slaughter 2005). This literature addresses the compliance question, asking whether or not states comply with a given fundamental norm of the UN system and by members of that system's liberal order.

We hold that, regarding the example of outer space, this approach struggles to capture the interactive dynamic between different actors and vantage points, for the emphasis rests on the question whether or not parties adhere to the existing legal framework. This research is mostly interested in cross-national policy convergence (Rathbun 2004), which operates along a binary logic that takes the meaning of norms as fixed. It thereby neglects the inherent contestatory practices as well as the importance of interpretive processes: as our example showed, responsibility for global goods comes in different forms and guises. Yet, we have ample evidence of transitional policy elites that form around issue areas (Seabrooke and Tsingou 2014) and the influence of wealthy private actors, such as Elon Musk's SpaceX as a prime example (Szocik, Lysenko-Ryba et al. 2016).

### **Towards a Different Take on Norms**

With regard to the illustrative case of 'outer space' policy, the research note proceeds to show how responsibility for the common heritage is constituted and re-enacted through practice. Given that norms have a "dual quality", that is, they are both socially constructed *and* inherently contested (Wiener 2007), responsibility for the common heritage is derived through studies that focus on norm contestations among affected stakeholders on the ground. The examination of practices of contestation at the micro-scale allows accounting for norm-

generation through groups of affected stakeholders in which competing interpretations clash. Crucially, these contestations reveal rivalling interpretations of norms. If and when they are reconciled through interactive practice, gaps in knowledge and communication are overcome. Thus, we hold, problems of contested compliance are addressed as moments in the process of norm implantation where shared policy norms may emerge based on mutual interaction. To assess the effect of these contestations, it is therefore necessary to understand both, the constitutive and the contestatory effect of practices. To that end, the novel framework we advance entails three pillars that inform policy norms as a vantage point for compliance: vested interests, vice, and virtue. The following elaborates on each pillar in turn.

The *vested interests* pillar emphasizes the diversity of actors forming around the emergence, adoption, negotiation and contestation of policy norms. It is a likely scenario and hence a basic condition for the way norms work in and through international fora these days (Bueger 2015), leading to a growing diversity of stakeholders with a plurality of interests in the same policy. It follows that it is more appropriate to work with an understanding of international relations that are increasingly determined by their quality as ‘inter-cultural’ than as inter-state relations (Wiener 2014: 6). We therefore argue that under conditions of ongoing inter-nationality global governance relations both reflect and enhance diversity. Therefore, the actorship that global governance policy study seeks to examine in relation to possible legitimacy gaps, must be conceptualised as ‘state-plus’ including state actors, and non-state actors such as international organisations, non-governmental organisations, advocacy groups and individual stakeholders. We argue that the legitimacy gap thus does not stem from a standard that researchers impose by addressing non-compliance, but rather stems from openings between actors’ normative positions.

The *vice* pillar holds that in the absence of homogenous social groups in global governance, norm contestation is more likely than social recognition. If norm-implementation depends on social recognition, it follows that contested compliance is expected as a rule rather

than the exception (Wiener 2014: 5). To facilitate favourable conditions of norm-implementation, therefore, stakeholders need to be engaged in dialogue. This is achieved through access to contestation (Brunnée and Toope 2016). Subsequently, the *virtue* pillar holds that conflictive interpretations of norms are essential in order to identify shared or opposing normative positions (Owen and Tully 2007). We argue that it is through such continuous engagement that actors may be able to derive organising principles that are conducive to reconciling conflicting understandings of normative principles and ensuing procedures, thereby creating the conditions for sustainable normativity.

Sustainable normativity rests on organising principles that allow for consensus-making at the meso-scale (Wiener 2008: 66, Vetterlein and Wiener 2013, Wiener 2014: 4). Access to contestation is crucial for sustainable normativity because it allows actors to reconcile general normative principles with moral appeal, on the one hand, and specific standards, rules and regulations which mark everyday practices, on the other. The approach provides a fresh take on legitimacy because it does not study global governance through the lens of interest and compliance. While such an approach has led to questions such as, “why would or should actors comply with norms (rules, regulations, principles) against their interest?”, it takes universal validity of norms as a given. As primarily interested in an actor’s response, it provides little in the way of a normative standpoint on the institutional underpinning of global governance. By contrast, and to bring politics back in, we seek to carve out the conditions of sustainable normativity as generated through practices of norm contestation.

Take the responsibility discourse as a case in question: the majority of actors involved in global governance would accept that responsibility is an issue of *global* reciprocity. After all, peace benefits human kind at large, as does access to clean air or water, which is upheld in climate convention or through policies of corporate social responsibility. Now, if we applied a common governance approach to understand such behaviour, we end up with explanations



that shed light on the benefits states or companies enjoy by engaging in what is regarded as responsible action. It is either just a reputational issue, directly avoiding costs as consumers might be able to punish through boycotts or it is pre-emptive behaviour to avoid more far-reaching regulation or even legislation by other governments. The accountability mechanisms at work here are reputational, market and legal (Grant and Keohane 2005).

The problem here is the lack of engagement with the normativity of the policy norm as such and the contestation that emerges around it. In fact, the very reference to accountability already highlights this point (Vetterlein 2018, forthcoming). While references to accountability emphasize the dimension of rights and compliance with rules and regulations as well as a one-sided relationship from the actor demanding accountability from another, responsibility differs in two ways: first, it allows for a proactive interpretation as actors might *take* on responsibility, self-motivated and also in cases when they have not caused a certain event or outcome for which they could be held responsible. That is, individual actors choose to self-impose constraints on their actions, including the expectation of fairness and social rules, based on specific moral values. Secondly, in *responding* to accountability claims, the blamed actors can and do significantly shape the policy norm at stake. In other words, responsibility implies a relational dimension. Understood as such, responsibility highlights the normativity of norms as well as the process of their (respective) contestation. Focusing on those moments of contested compliance by identifying the group of stakeholders in which the norm is negotiated, identifying stakeholders' practical knowledge, knowledge gaps and strategies of argumentation, we would be able to answer questions beyond a mere compliance/non-compliance dichotomy. Where do norms come from? What stakeholders are involved to shape the content of the norm? And who has the power to do so?

The problem with the norm compliance account is twofold: first, if we perceive of responsibility policy norms mainly as rules and regulations that actors choose to comply or not comply with, based on their own interest, we exclude all moments of innovative norm

formation, change and enactments of the rules *in situ*. The focus would be on the ‘logic of appropriateness’ and the identification of conditions to enhance compliance, but not on the ways in which stakeholders, based on their identity and the normative context in which contestation takes place, happen to mobilize support for their ideas and values, based on which responsibility norms are produced, reproduced, and changed. The second problem addresses the issue of power. A common argument is that those who are able to set standards or avoid the compliance with norms possess sufficient political and/or material resources and that the power of norms, as it were, should not be overemphasized.<sup>viii</sup> Our approach suggests, that the relationship between norms and behaviour and contestation and action sheds light on how norms come about and are filled with content. Our focus on background knowledge of relevant stakeholders and knowledge gaps that lead to contested compliance has thus also a discursive element as it is through such processes of contestation, that would be the empirical focus of our approach, that discourses are produced. Before outlining how such an approach could advance methodologically, we first elaborate on the theoretical premises it is based on.

### **Between Fundamental Norms and Policy Regulation: Towards Sustainable Normativity**

Policies of responsibility do not exist in an ideational vacuum. Like all other policies, they are based on the way in which solutions to policy problems are imagined and designed relates to more profound ideas of how things *should* be, i.e. that they belong to the realm of normativity. It refers to questions such as who is responsible for global public goods, including outer space and celestial bodies? Who is or should be in a position to decide about access to them? And, what are practices surrounding their use? In response to these questions, we suggest focusing on ‘policy norms’ as the ground rules that emerge through practice in the larger policy-making process.

Perceiving of policy-making as norm-generative has the advantage to refer back to the fundamental ideas underlying each policy (compare Table 1 below for distinct norm types).

At the same time, policy norms are also not the specific regulations that are supposed to be implemented. As Park and Vetterlein point out, “[p]olicy norms are defined as shared expectations for all relevant actors within a community about what constitutes appropriate behaviour, which is encapsulated in [... a] policy.” (Park and Vetterlein 2010: 4) The policy level therefore is the place where greater ideas materialize and are operationalized in more specific approaches and at the same time policy norms are still open enough for interpretation. They also change through contestation within and across communities, which is at the centre of the operationalization discussed in the next section. The tension between the normativity of norms and their specificity has been made visible by critical norms research through a typology that differentiates three dimensions (see Table 1 below). It distinguishes between *type 1* norms that entail universal moral appeal (e.g. fundamental human rights, democracy or sustainability) and are likely to be agreed on in principle. *Type 2* norms evolve from policy making, jurisprudence or politics (e.g. qualified majority voting; CBDR or R2P) and enjoy an equal degree of legitimacy in theory and in practice. And *type 3* norms set specific standards, rules and regulations for specific policy measures (e.g., fishing quotas and net size; electoral rules; and so forth).

**Table 1 about here**

Perceiving norms as indicated by this typology allows the opportunity to differentiate analytically between different levels of generalisability, validity and contestation of norms. It offers the opportunity to address the puzzling observation of contested compliance as a situation where fundamental norms (type 1) are generally agreed upon and, at the same time, the regulations (type 3) to implement the norm on the ground, stand contested. This argument is grounded in critical approaches to norms in IR theory that has pointed out that norms do not entail a defined meaning or standard which is universally valid (Walker 1995 [1989]). This

assumption has been tested by pitching universalist meanings of *type 1* norms against contingent interpretations that reflected particular normative structures of meaning-in-use in selected contexts. The results of empirical research show that when enacted outside the boundaries of stable social groups the implementation of *type 1* norms was contested based on different meanings according to their respective social constitution in culturally distinct contexts resulting in non-compliance with *type 3* norms (Puetter and Wiener 2009, Park and Vetterlein 2010).

Corporate social responsibility is a good case here. CSR has been embraced and celebrated as the solution to withdrawing (in the North) or non-existing welfare states (in the South). CSR relates to broader fundamental ideas of human rights (in reference to child labour and working standards) and sustainability (in relation to environmental standards) that everyone seems to agree upon, also companies and CEOs. Yet, the reality looks different. First of all, not so many companies actually engage in CSR activities as the current CSR discourse makes us believe (Håkonsson and Vetterlein 2010). But even the ones that engage in CSR in some places are caught for non-compliance in other places. By comparison, responsibility with regard to outer space use presents us with a different dilemma. This governance field cannot look back to comparable processes that established CSR and there is no guarantee that a comparable set of standardised procedures will emerge. Currently, some approaches to outer space appear to treat it as terra incognita which promises access to considerable riches for those who dare. But as we have seen, this is not the only approach taken and there is considerable variation among states as well as between states and private companies. While material factors such as resources and power are always a component in decisions to comply with rules and standards, they alone cannot explain this situation of contested compliance. It is therefore necessary to draw attention to social factors such as culture and experience which constitute distinct types of knowledge. In the next section, we

argue that identifying these types of knowledge that different actors bring to negotiate policy norms is the first step towards increased norm compliance.

## **Operationalizing the Meso-Scale: Knowledge Gaps and Moments of**

### **Contestation**

In order to reveal the socio-cultural foundation of policy norms we suggest focusing on interactive modes of knowledge production and the relations that are conducive to or prevent an exchange of knowledge (Graph 1, below). Specifically, we suggest that the gap between the level of appropriateness and the degree of implementation that leads to contested compliance be approached as a *knowledge gap*. This gap emerges in the absence of communication between involved (groups of) actors who contribute different types of knowledge to norm generation, implementation, negotiation and contestation. We propose a basic model that heuristically distinguishes between types of knowledge. This distinction highlights that governance processes do not merely occur within *one given* actor group. Rather they develop interactively in an exchange of types of knowledge that exist simultaneously but separately. For instance, the US private sector's approach to outer space differs from other countries. Our model identifies distinct positions, including experts from academia and non-governmental organisations whose claim to knowledge about a subject area is often couched in objective terms. These experts possess a particular kind of knowledge of the world which enables them to give advice free from sentiment or political considerations. Another form of knowledge exists in the political-legal realm. Here inter/national organisations and institutions engage with a subject from their own vantage point, providing technical knowledge of norm setting, for instance. Finally, stakeholders, such as companies (or, in other governance areas, associations, workers and affected people whose livelihood is immediately at stake) contribute to negotiating normativity. They possess specific tacit knowledge on the subject matter embedded in daily routines.

Given the complexity of multi-actor global governance, we hypothesise that sustainable normativity emerges as a result of interactive knowledge production and transfer in the process of policy norm contestation. That is, a focus on modes of knowledge production and transfer in the process of interaction around a particular policy norm would contribute to overcoming the gap between acknowledgement and contestation of the responsibility norm. The apparent vice of increased inter-cultural contact could thus be turned into virtue. By doing so, we seek to overcome the gap by adding sustainable normativity as the space where meso-scale norms (defined as organising principles) are negotiated among all involved actors. These norms would allow for reconciling scientific advice, norm-setting and local practices. How such an approach would translate empirically and methodologically will be described now.

**Figure 1 about here**

The empirical approach to overcoming the knowledge gap embarks from the premise that knowledge resembles a cultural reservoir of meanings which can be drawn on and through which new meaning/knowledge can be created (Bevir and Rhodes 2005). That is, the nature of the problem at stake will be defined from the vantage point of a particular horizon (Gadamer 2004 [1975]). To continue with our example, responsibility for outer space is likely to be approached through very different mind-sets, informed by actors' connotations. For instance, experts may regard it as a question of technological feasibility and/or address a number of legal considerations. Their advice could involve legal principles as well as health and safety measures for the use of the earth's orbit, standards for propulsion systems etc. Stakeholders could regard it as a possibility to satisfy their shareholders' expectations and/or justify exploration with reference to a greater human good. Politicians, finally, may hold that standards are either conducive or hindering for business opportunities and/or the national

interest. These examples show how difficult it may be for diverse actors to agree on shared normative understandings, which we addressed in the beginning of this note. Each of the three groups of actors that we identified as a heuristic device may present a heteronomous picture. This forms part of an explanation, why the reconciliation of the normativity of a norm and its specificity are difficult. Yet, it is the task of researchers to reconstruct particular knowledge held by the protagonists in order to identify the “gaps” that exist between different understandings, which reflect different background knowledge.

Given the potential diversity amongst relevant actors, we propose for researchers to pursue a bifocal strategy that focuses first on knowledge gaps that are revealed through practices of contestation and then on knowledge change. This can be traced in data obtained in interviews, participant observation and document analyses. This strategy helps to highlight the role of actors involved and the setting in which knowledge is created, maintained or altered. In this regard, two types of knowledge (Anderson 1976) are important. The first type of knowledge we refer to as ‘declarative knowledge’. It comprises factual information about the world. It is the contextual knowledge of members of the respective group that the researchers may approach based on their particular expertise, e.g. as representatives in companies (group 1), bureaucrats (group 2), or as scientists (group 3). Factual statements that can be identified in interviews or policy documents tell us about particular settings, that is when and where knowledge is created, sustained or altered. The approach helps identifying who is part of the actor group and delineate the contours of contestations, such as potentially conflicting positions within and across groups which we identified as knowledge gaps.

The second type of knowledge we refer to as ‘procedural knowledge’. It is not about the structural setting that we obtain from declarative knowledge but rather the subjective position of interlocutors. This type of knowledge comprises tacit know-how that has been highlighted as important in IR’s turn towards practices (Pouliot 2008, Adler and Pouliot 2011, Sending 2011). Procedural knowledge comprises narrative elements that clarify how the

members of an actor group approach responsibility based on their (often) unspoken and subjective connotations. It is possible to trigger these connotations through individual and focus group interviews. Narrative elements reveal distinct positionings (Harré and Langenhove 1999) and provide information about (subjectively perceived) change over time (Lucius-Hoehne and Deppermann 2002). Researchers support their analysis of interviews and documents through fieldwork in the respective policy areas (“participant observation”). From the narrative elements one thus obtains the necessary information to reconstruct what can be termed ‘core themes’ that dominate the type of knowledge amongst the actors. We do not assume that knowledge within a group is homogenous. But the distinction between the two types reveals how members of the group approach responsibility based on their tacit and subjective connotations as well as factual information on when and where knowledge is created, sustained or altered. The actual procedure to uncover spaces of sustainable normativity spans several steps.

### **Table 2 about here**

*Step 1:* Initially, interviews, document analyses as well as participant observation highlight discursive moments for each actor group. Based on the two types of knowledge research reveals how the members of the group approach responsibility based on their tacit and subjective connotations as well as factual information on when and where knowledge is created, sustained or altered. *Step 2:* In a further step, once knowledge about responsibility is reconstructed for each group, we focus on knowledge gaps between groups. These are indicated by knowledge contestation (different interpretations, meanings) or by the lack of knowledge transfer (different settings). By combining both types of knowledge we establish whether and how knowledge is translated across groups and whether a knowledge interface exists. This allows for inductive conclusions about organising principles constituted through interaction, which matter for establishing sustainable normativity. The aim of this step is to



identify organising principles that may be conducive towards creating a common vantage point. *Step 3* links the empirically identified organising principles to a broader discussion of space for sustainable normativity to assess whether an interactive space for sustainable normativity can be identified. Based on the empirical findings from the previous two steps, the final step thus involves a theoretical discussion to tackle the problem of contested compliance. The aim is to close with a proposition for global governance research by sketching an agenda that is applicable across different governance sectors. It is here that we draw out the virtue of practices of contestation to develop a proposition for the literature on global governance towards a new research agenda that enriches the framework of global governance approaches insofar as it pays particular attention to filling the gap at the meso-scale of global governance (by focusing on policy norms).

## **Conclusion**

This note embarked on the premise that norm compliance and policy-making need to be addressed holistically with a particular focus on what stakeholders take for granted when engaging in interaction and how the meaning of norms may be contested among them. The example of outer space exploration and exploitation highlights not only the spread of the responsibility discourse in global governance as such, it also reveals how responsibility is addressed from quite different vantage points. Private actors may hold different goals than states, but they may also cooperate. In other cases, states may make space missions part of their national interests that does not only increase technological capacities, but it may also serve broader identity projects. President Trump's most recent suggestion that the USA build a 'space force' neatly illustrates the broader conceptual points we raised regarding the vantage points on responsibility for outer space.

Against this background, outer space becomes a realm that is populated with diverging as well as overlapping perspectives. We therefore asked how one can address this scenario in

the absence of universally shared positions. As intercultural interaction among diverse groups of actors is the normal scenario in global governance, this note holds that research needs to address this within a framework that takes a fresh view on the question of legitimacy. Herein, the practices of engagement are considered constitutive for the meaning of norms. But unlike cost-benefit approaches to norms or those interested in input or output legitimacy have argued in the past, focusing on knowledge gaps and moments of contestation may also be conducive to shared normativity. Rather than regarding contestation as problematic and an indicator of a compliance issue, the note proposes using it to derive insights into knowledge gaps between relevant groups of stakeholders. Sustainable normativity, which raises the legitimacy of governance processes *tout court*, may be achieved through establishing organising principles at the meso-scale of global governance, particularly where these are conducive to regular access to contestation. As we demonstrated with regard to the recent phenomenon of responsibility in global governance, it may be straightforward to agree on the fundamental norm, yet less so on the standardised procedures and regulations that come with practices of implementation.

The ensuing framework introduced in section three accounts for what we call the ‘lasting reality’ of global governance, namely, the regular confrontation of culturally embedded normativity that stems from the increased diversity of actors in the global realm. The term ‘cultural’ is carefully chosen in this regard as it signifies more than the usual reference to inter-‘national’ encounters. As our argument highlights, even within particular policy-fields there exist a number of different vantage points that may hinder a shared understanding of fundamental norms. We argue that approaching this constellation through a perspective centring on different types of knowledge may pave the way for empirically accounting for mid-range norms. Ultimately, we argue that this approach is transferable to other governance sectors.

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## Notes

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<sup>i</sup> For the code of ethics compare the American Bankers Association (ABA) at:

<sup>ii</sup> See: <http://www.abn.com/Training/OCB/Pages/ethics/responsibilities.html>.

<sup>iii</sup> See: [https://www.youtube.com/watch?v=Qk\\_fGc92bJY](https://www.youtube.com/watch?v=Qk_fGc92bJY) (accessed 10 May 2017).

<sup>iv</sup> <http://www.space.com/35472-china-moon-sample-return-mission-november.html>. The mission was initially scheduled form November 2017 but was postponed due to difficulties with the launch vehicle.

<sup>v</sup> <http://www.telegraph.co.uk/news/2017/02/15/indias-space-agency-successfully-launches-100-foreign-nano-satellites>.

<sup>vi</sup> <http://www.isro.gov.in/chandrayaan-2>

<sup>vii</sup> Compare Onuf (1994).

<sup>viii</sup> For a critique of this argument with regard to CSR, see Vetterlein (2017).

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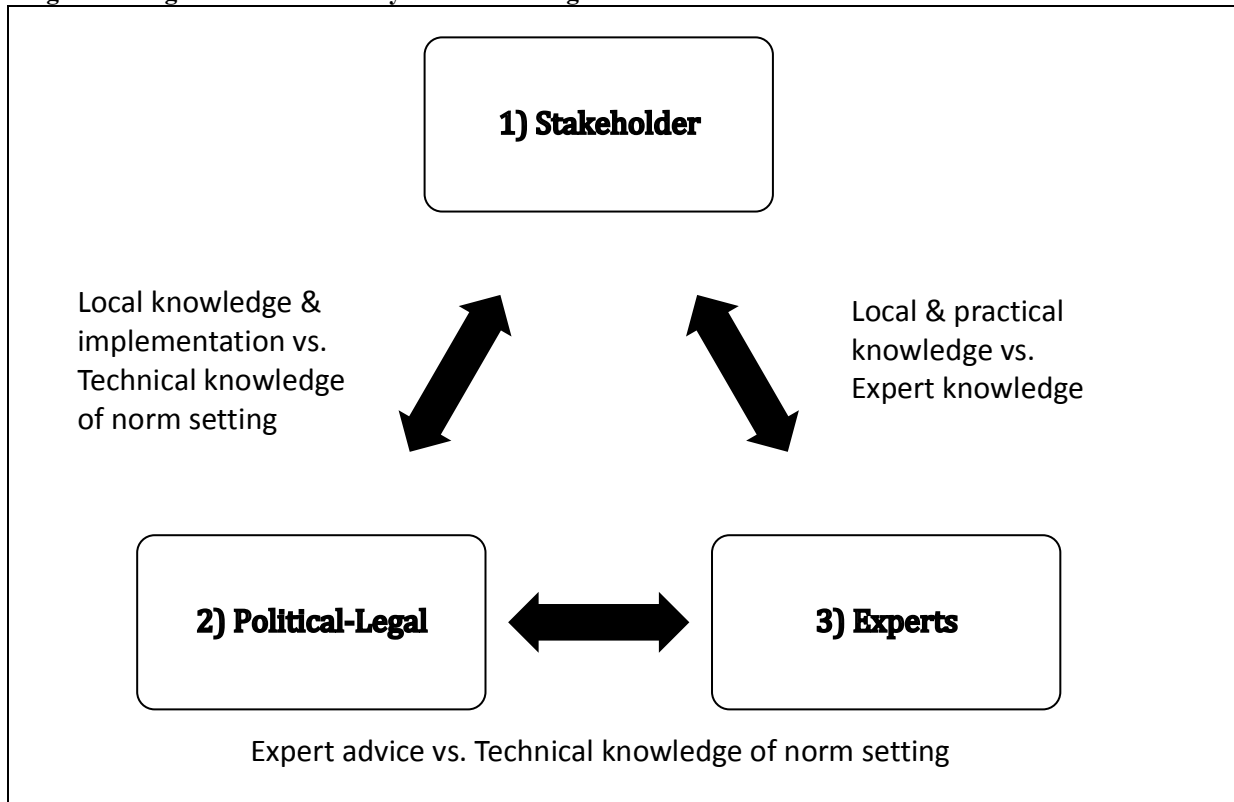
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**Table 1: Typological Approach to Norms**

<b>Norms</b>	<b>Example</b>	<b>Scale of Global Governance</b>	<b>Degree of Contestation</b>
Type 1 Fundamental norms	Democracy Human Rights Sovereignty	Macro	Low
Type 2 Organizing principles, ground rules	Access to participation; Right to justification Responsibility to Protect Corporate Social Responsibility CBDR	Meso	<i>Legitimacy gap</i>
Type 3 Standards, regulations	Voting procedures; Ballot handling ILO working standards; ISO norms	Micro	High

*Source:* Adaptation from Wiener 2008: 66; Vetterlein and Wiener 2013.

**Figure 1: Negotiated Normativity in interactive governance relations**



Source: Authors

**Table 2: Accounting for Knowledge**

<b>Knowledge</b>	<b>Negotiated Normativity</b>	<b>Policy Norms at the Meso-scale</b>
Obtain <i>declarative</i> and <i>procedural</i> knowledge in three actor groups	Reconstruct <i>organising principles</i> based on knowledge within and transfer across <i>actor groups</i>	Conclude on normative roots for sustainable normativity and potential for global constitutionalism
<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>

Source: Authors