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RESEARCH ARTICLE

The contestation and construction of global governance authorities: A study from the global business and human rights regime

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Abstract

The contestation of global governance institutions can strengthen or weaken, as well as transform, them. This article analyses the productive potential of contestation and justification of global governance institutions by examining the multiple authorities that are invoked as auxiliaries in the process. It studies the (re-)construction of these authorities by dissecting authority into three components: power, legitimacy and connection to public interests. Empirically, the article focuses on the issue area of business and human rights, examining the highly contested process of drafting a binding instrument in the United Nations Treaty Process. The analysis shows that the success of the Treaty Process not only hinges on its direct reaction to contestation, but also on its ability to (re-)construct the multiple related authorities. Ultimately, the article argues that the contestation of global governance institutions involves (re-)constructing multiple authorities. This demonstrates how contestation can also affect global governance institutions, actors and norms beyond the specific field of deliberation.

Keywords: authority; business and human rights; contestation; power; global governance; legitimacy; public interest

I. Introduction

Global governance institutions are regularly subjected to contestation (Stephen and Zürn 2019a). Contestation may strengthen or weaken these institutions, but it can also transform them. This article analyses the productive potential of the deliberative processes of contestation and justification by examining the multiple authorities that are invoked. It argues that the contestation of a global governance institution involves (re-)constructing multiple authorities. The institution's success therefore hinges not only on its direct reaction to the contestation, but also on its ability to (re-)construct the multiple related authorities.

The article contributes to two strands of the international relations literature. First, it adds to the global governance research that explores the relationship between contestation and authority, enhancing our understanding of the authorities of actors and institutions in global governance. It operationalizes authority as power that is legitimated

by a connection to public interests. Hence, three components – power, legitimacy and connection to public interests – determine authority in global governance. The components' scope, meanings and relationships may vary. This definition captures both public and private forms of authority, and thus accounts for the relevance of public and private actors in global governance.

Second, the article resonates with second-generation norms research that analyses the contestation of norms and norm regimes (Lantis 2017). Studies of the forms and effects of norm contestation (Deitelhoff and Zimmermann 2020; Schmidt and Sikkink 2019; Wiener 2014) and norm localization (Acharya 2004; Betts and Orchard 2014; Zimmermann 2014) discuss how contestation, interpretation and adaption are (re-)constructing norms. This article connects the interpretative processes of norm contestation undertaken by contesting and contested actors with the authority of related institutions, actors and norms. It thus extends the concept of authority to include actors and institutions as well as norms in global governance.

The empirical focus of the article is the issue area of business and human rights (BHR). Fierce discussions about business responsibilities for human rights have controversially but incrementally led to the establishment of a global BHR regime consisting of a range of norms, rules, institutions and actors (Avery 2000; Ramasastry 2015; Skinner, Chambers and McGrath 2020). This global BHR regime provides the context for the single-case study presented here of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIWG). The deliberations in the OEIWG paradigmatically mirror the broader BHR controversies. Although the OEIWG's existence has been contested from its inception, it continues to pursue its mandate to draft a binding instrument, known as the Treaty Process; the outcome of this process remains uncertain. The European Union's (EU) contestation of the OEIWG represents the persistent debates in the global BHR regime. It also transcends the global–local and North–South divide that ascribes human rights adherence mainly to Western actors.

Based on three major points of contestation put forward by the European Union, the study analyses the invocation of three authorities in the OEIWG deliberations: (1) the OEIWG as part of an international organization; (2) business enterprises as global governance actors; and (3) the UN Guiding Principles on Business and Human Rights (UNGPs) as the normative cornerstone of the BHR regime. All three authorities are (re-) constructed in the processes of contestation and justification in (and of) the OEIWG.

The empirical analysis of these processes is not limited to the OEIWG as the contested actor, and the European Union as the contesting actor. Rather, this article considers contributions from all participating stakeholders because the actors of justification not only include the OEIWG and its supporting states, but extend to non-state actors and other stakeholders that take part in the Treaty Process. Likewise, other actors in addition to the European Union put forward similar contestations. The study thus accounts for the plurality of actors involved in the constellation of contestation and authority in global governance (also cf. Holzscheiter 2016).

This study is based on an extended, interpretative form of qualitative content analysis applied to all documents that formed part of the deliberations in the Treaty Process between 2014 and 2019.[1] After several rounds of deductive coding exploring the

[1]The extended qualitative content analysis approach (as developed in Mende 2020b) integrates descriptive and explorative qualitative content analysis (Schreier 2012) with elements of grounded theory (Strauss and Corbin 1998). The study examines statements and critiques from actors that are directly or indirectly involved in the Treaty Process. The corpus of documents analysed thus also includes statements from actors

contestations, the analysis was pursued inductively by further engaging with the coded passages, finding sub-dimensions, drawing connections and developing explanations. The analysis also draws on 20 expert interviews with relevant stakeholders in the Treaty Process, including representatives of states, UN organs, other international organizations, business actors, unions and non-governmental organizations (NGOs).[2] It is further backed by field visits to the United Nations and related international and non-governmental organizations in Geneva in 2015, 2016 and 2017, and by participant observation of the second OEIWG session in 2016 and the UN Forum on Business and Human Rights in 2019.

The article proceeds by introducing the theoretical framework of the constellation of contestation and global governance authorities in Part II. Part III outlines the OEIWG and its context, the global BHR regime. Part IV introduces the main points of contestation and links them to the three relevant authorities – the OEIWG, business enterprises and the UNGPs. It then examines the OEIWG's contestation and justification related to these three authorities by unpacking the elements of authority – power, legitimacy and the connection to public interests. Part V discusses the results in two steps. First, it assesses the OEIWG's capacity to reconcile contestation with regard to its ability to (re-)construct the multiple authorities involved. Second, it examines the differences in the scope, meanings and emphasis of the three components of authority, which facilitates further conclusions with regard to conceptualizing authority in global governance. Part VI concludes that the OEIWG's success in responding to contestation hinges on its ability to (re-)construct the authorities involved. This conclusion allows further discussion of the constellation of contestation and authority in global governance, which explores the productive effects of contestation and the multiplicity of authorities invoked.

II. Contestation and authority

Authority

The article focuses on the contestation and (re-)construction of authorities in global governance. It thus simultaneously takes a broad and fine-grained approach to authority. The concept of authority in global governance is used broadly in the sense that it extends to actors and institutions as well as norms. This approach takes into account the multiple types of authority involved in global governance and their links to contestation. Yet, rather than simply merging these different kinds into a single concept, differences between them remain visible through the individual components of authority. This necessitates the more fine-grained approach to authority as a triadic concept.

that do not take part in the negotiations in order to consider the full range of perspectives. The study period spans from the HRC's decision to initiate the working group in 2014 to the OEIWG's annual session in 2019. It therefore includes approximately 1,100 documents that have been submitted to the OEIWG or published as a commentary on its (prospective) work. The list of documents is available in the 'Binding Treaty on Business and Human Rights' dataset at Harvard Dataverse (doi.org/10.7910/DVN/XK3JX6). The findings are illustrated with quotes from the documents, marked with the type of actor, followed by the title of the document as submitted to the OEIWG (usually including the authoring stakeholder), the year of the document and the page number of the quote.

[2]The expert interviews were conducted between April 2019 and July 2020. The interviewees were guaranteed full anonymity, which is why the interviews are marked with the type of actor and interview date in consecutive numbers (indicating the order in which they were conducted).

The article defines authority as power that is legitimated (more or less successfully) by a connection to public interests. Authority thus comprises three components that shape and mutually influence each other (Mende 2020a): power, legitimacy, and the connection to public interests. This triadic concept is backed by the widely shared recognition that global governance institutions 'will only thrive if they are viewed as legitimate' (Buchanan and Keohane 2006: 407; see also Tallberg, Bäckstrand and Scholte 2018a). They also need a certain degree of power[3] in order to be capable of acting (Barnett and Finnemore 2004). Yet power differs from authority in important ways: 'Authority involves more than the ability to get people to do what they otherwise would not; authority often consists of telling people what is the right thing to do. There is a persuasive and normative element in authority that is tightly linked to its legitimacy' (Barnett and Finnemore 2005: 170). This article therefore conceptualizes power as only one component of authority. Power may bolster authority, but the two are not identical.

Authority thus consists of – but does not equal – legitimate power (contrary to, for example, Hurd 1999) for two reasons. First, the degree of legitimacy can vary. The legitimacy of an authority can be threatened, contested and weakened: 'authority implies a rebuttable claim to legitimacy' (Bogdandy, Goldmann and Venzke 2017: 140; see also Zürn, Binder and Ecker-Ehrhardt 2012: 70ff). Conceptualizing legitimacy as one varying component of authority emphasizes this dynamic aspect.

Second, the legitimacy of a global governance institution's power rests on its connection to public interests. (Note that this does not necessarily imply the *fulfilment* of public interests.) Public interests may include human rights, public goods and shared values more generally. 'Reduced to its essence, then, the core demand of authority is to make the institutionalization of power in the best interests of the governed population' (Koppell 2007: 194). As legitimacy depends on the perception of audiences, and since global governance is based on the idea of contributing to public interests (Zürn 2013: 408; Ruggie 2004: 500), global governance institutions must convincingly refer to public interests in order to legitimate their power, thereby constituting their authority.

The triadic concept of authority is compatible with approaches that place a different emphasis on each component and infer different degrees of institutionalization. The triad approach captures the authority of actors and institutions as well as norms without simply merging them into a single concept. Instead, different constellations of the three components of authority capture differences between the different types of authority.

This article's triadic understanding of authority includes both state and non-state actors in global governance. Global governance scholarship has sufficiently challenged the rigorous dichotomy between the public and the private, and has demonstrated the close connection between private actors and public interests (Cutler, Haufler and Porter 1999; Hall and Biersteker 2002; Ruggie 2004). Accordingly, the triadic concept of authority in global governance includes the private authority of enterprises (Cutler 2018; Fuchs and Lederer 2007; Mende 2020c) and the international public authority of international organizations (Bogdandy, Goldmann and Venzke 2017; Zürn 2018) and norm regimes (Wiener 2018).

Contestation

The concept of contestation is particularly suitable for the study of the authority of global governance institutions and actors, as well as norms. This is due to the concept's dual

[3]This is not limited to a particular understanding of power; it applies to constructivist as well as realist and other definitions.

development in both the literature on global governance institutions and norms research. This article links both strands to elaborate the dynamic constellation between authority and contestation in its different yet comparable forms.

Global governance researchers analyse the contestation of international institutions (including international organizations and other global governance actors), focusing on the exercise and content of their international authority (Stephen and Zürn 2019b: 14). They operationalize contestation as one of many types of resistance that take the form of public deliberation, communication, political evaluation and criticism (Stephen and Zürn 2019b: 20). These approaches focus mainly on practices of delegitimation and legitimation (Tallberg, Bäckstrand and Scholte 2018b), thereby capturing a central component of the triadic concept of authority: legitimacy. Contestation, in turn, 'presses authority holders to justify themselves by making explicit how they serve the common good' (Stephen and Zürn 2019b: 22), which is where the second component of authority – the connection to public interests – comes in.

While global governance research highlights the close connection between contestation and authority, second-generation norms researchers (cf. Lantis 2017) argue that contestation is inherent to the very constitution, proliferation and dynamics of norms: 'Norms are contested by default' (Wiener 2007: 58). This is because the meanings of norms are constructed in deliberations, which are fuelled (if not initiated) by contestation. In this way, norms and their contestedness 'represent the legitimating core of global governance' (Wiener 2014: 4). Contestation thus forms a constitutive aspect of deliberations, and as such affects not only the strengthening or weakening, but also the forms and meanings, of authority.

In sum, both strands of research highlight the constituting and constructive effects of contestation.[4] The contestation of a norm can enhance its legitimacy. This also applies to the contestation of global governance institutions. This article explores the close relationship between contestation and authority.

The constellation of contestation and authorities

The article argues that the processes of contestation and justification (i.e. addressing the contestation) of a global governance institution determines the strengthening or weakening of its authority and the (re-)construction of its meanings. The article suggests considering not only the authority of the contested global governance institution, but further analysing related authorities that are being (re-)constructed in the processes of contestation and justification.

A rather analytical formula helps to illustrate this constellation Figure 1: global governance institution A is contested by actor(s) B. In this contestation, the authority of A (A-a) is at stake. Further related authorities also play a major role in the process of contestation (by actor B and its allies) and justification (by actor A and its allies). Both the contesting and contested actors invoke not only the authority of A (A-a), but related authorities (X-a, Y-a, Z-a, …) to pursue their interests. A's success depends on its ability to (re-)construct these related authorities. This shows how a process of contestation can

[4]Note that both strands allude to further concepts that do not play a role in this article. This includes understanding the contestation of international authorities primarily through politicization in global governance research (Rauh and Zürn 2020; Zürn, Binder, and Ecker-Ehrhardt 2012). Norms research further differentiates between the norm-strengthening (Wiener 2014) and norm-weakening (Panke and Petersohn 2012) effects of contestation, and between different types of contestation (Deitelhoff and Zimmermann 2020).

yield effects on global governance institutions, actors and norms beyond the specific field of deliberation.

The remainder of this article focuses on the OEIWG and its supporters (A) as actors of (re-)constructing authorities that are responding to contestations put forward by the European Union (B). The subjects of (re-)construction – i.e. the authorities invoked – include the OEIWG (A-a), business enterprises (X-a) and the UNGPs (Y-a).

III. The business and human rights regime and the treaty process

The OEIWG with the Treaty Process aims to establish a legally binding instrument – that is, an international treaty that regulates and judicializes business behaviour with regard to human rights on a global level. It thus represents two long-standing major controversies that characterize the global BHR regime in general. The first is the question of whether business enterprises should have binding or non-binding responsibilities with regard to human rights – that is, whether they should be regulated via soft-law norms or hard-law treaties. The second, related, question is whether enterprises should be regulated at the global or state level. Both questions challenge the state-based character of the international human rights regime, in which states (as public actors) are responsible for respecting, protecting and fulfilling human rights, whereas companies (as private actors) are only asked to respect human rights via soft law at the global level (Alston 2005; Clapham 2006; Noortmann and Ryngaert 2010).

Two capstones are characteristic of these debates (cf. Fitzgerald 2019; López 2013; Mantilla 2009; Morrison 2011; Ruggie 2017).[5] One is the so-called UN Draft Norms from 2003 that aimed to establish binding and direct obligations for transnational companies (TNCs) on a global level (Deva 2004; Weissbrodt and Kruger 2003). They failed in the face of strong opposition from numerous states and the business community. The opposition was in part because the 'construction of the TNCs as addressees blurred the distinction between international public and private legal frameworks, and thus undermined the central role of states as international law subjects' (Miretski and Bachmann 2012: 10). The reason for the Draft Norms – gaps in global regulation that transnational enterprises can exploit – was the very reason for their failure: the attempt to directly regulate companies on a global rather than a state level. This controversy is mirrored directly in the (re-) construction of the authority of business enterprises, as discussed below.

After the failure of the Draft Norms, the United Nations initiated a process that led to the second capstone of the global BHR regime, the UNGPs, which were created by John Ruggie as Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, and endorsed by the UN Human Rights Council (HRC) in 2011. Acknowledged as a consensual foundation of the BHR regime, the UNGPs formulate business and state responsibilities, and provide guidance for remedy and implementation, all in the non-binding form of soft law. Nevertheless (or for this very reason), the UNGPs are treated as a major consensus underlying the entire BHR regime and are agreed upon by a high plurality of actors. They provide a decisive normative yardstick for both business behaviour and the development of laws. The authority of the UNGPs plays a major role in the contestation of the OEIWG, as shown below.

[5]The debates, however, are much older. In 1992, for example, decades-long deliberations about the UN Code of Conduct on Transnational Corporations were aborted due to notorious disagreements between actors who favour binding regulation or free markets (Moran 2009, 92).

The establishment of the OEIWG by the UN Human Rights Council with Resolution 26/9 in 2014 was framed as a direct reaction to the non-binding character of the UNGPs. The OEIWG's formation was driven mainly by states from the Global South and civil society organizations. Most objections originated from states in the Global North and business representatives, as well as from John Ruggie, the author of the UNGPs. The resolution passed with 20 votes in favor, fourteen against and thirteen abstentions, mirroring the North–South divide on the issue. Since then, the release of treaty drafts by the OEIWG's chairperson (the Elements from September 2017, the Zero Draft from July 2018, the Revised Draft from July 2019 and the Second Revised Draft from August 2020) has fuelled considerable debate within and alongside the OEIWG's annual sessions.

The OEIWG is composed of interested states and is chaired by Ecuador, which initiated the Treaty Process. The deliberations at its annual sessions are characterized by a high level of participation and input from non-state actors, which is why all participating actors are included in the empirical analysis.

In order to identify the major points of contestation in (and related to) the OEIWG, this article focuses on the continuous critique brought forward by the European Union[6] for three reasons. First, while states from the Global South backed the OEIWG's creation, its success (i.e. comprehensive implementation) also relies on states from the Global North. This is because a globally ratified international treaty is stronger than one that applies only to some states. In addition, a significant number of transnational companies – which are particularly prone to exploit global governance gaps and fragmented supply and value chains – are headquartered in the Global North (Dicken 2011).

The second reason why this article focuses on the European Union as a contesting actor is its decisive role for the behaviour of EU member states. The majority of EU member states do not take an individual position on the treaty drafts; they instead refer to the EU position. This even applies to France, which has a stronger interest in the Treaty Process due to its *Loi de Vigiliance*, a binding law on corporate due diligence that is unique within the European Union.

Third, the points brought forward by the European Union are not only endorsed by EU member states for reasons of bloc voting. They also represent serious doubts and concerns that are shared by a number of stakeholders, including non-European states, business enterprises and, to some extent, even civil society organizations.

The European Union's points of contestation are therefore representative of the broader debates taking place with regard to the OEIWG;[7] its aim of producing a globally binding instrument represents a highly controversial step in the development of the global BHR regime more generally.

[6]The European Union holds observer status in the HRC. It announced its first statement objecting to Ecuador's initiative in the Human Rights Council 'on behalf of the EU Member States that are members of the Human Rights Council' and 'agreed by the European Union as a whole' (Intergovernmental\HRC_resolution_Explanation_of_vote_EU, 2014: 1). In OEIWG debates, the European Union is represented by EU delegates to the United Nations, even though they are not institutionally mandated to represent the European Union in the Treaty Process. Strikingly, the European Parliament and the European Economic and Social Committee support the Treaty Process in their own statements.

[7]Other points of critique address legal questions and further details – such as extraterritoriality, liability, the scope of human rights and the role of human rights defenders – which are beyond the scope of this article.

IV. Three authorities in the OEIWG

This section examines the contestation and justification in and of the OEIWG in detail. It starts by identifying the points of contestation and their relationship to global governance authorities.

The EU objections culminate in three major points of contestation. First, the European Union and other actors criticize the OEIWG's proceedings and procedures. This contestation directly relates to the OEIWG's public authority as part of an international organization with a political mandate.

Second, the European Union criticizes the OEIWG's focus on transnational enterprises. The critics demand that the Treaty Process should address all enterprises (including domestic firms), which raises questions related to scope and forms of business responsibilities. This point of contestation addresses the authority of business enterprises as global governance actors.

Third, critics insist that the Treaty Process should be closely linked to the UNGPs and their respective mechanisms (such as National Action Plans) – or ideally to stick with the status quo of the UNGPs in the first place. This contestation is linked to the authority of the UNGPs as a bundle of norms.

Based on these three points of contestation and their relationship to the three authorities, this study explores how the three authorities are being invoked and (re-) constructed in OEIWG deliberations (see Figure 1).

The analysis proceeds by unpacking the components of authority – power, legitimacy, and connection to public interests. It discusses the contestation and (re-)construction of each component in turn. This step-by-step analysis considers different constellations of the three components and how they constitute the authority of institutions and actors as well as norms.

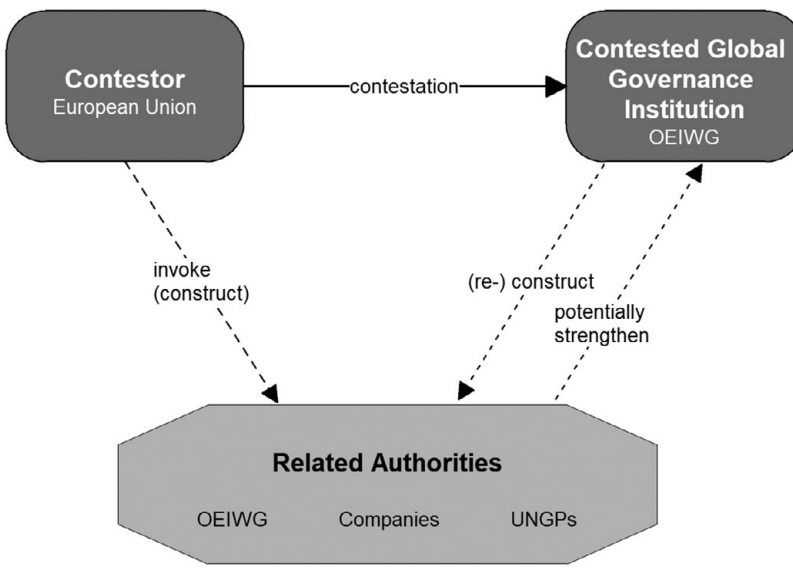

Figure 1. The constellation of contestation and authorities

The authority of the OEIWG

The OEIWG's authority is constituted by its mandate as defined in HRC Resolution 26/9:

> to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (UN Doc. A/HRC/RES/26/9).

Its authority is thus situated within an international organization – the United Nations, a public global governance institution. Contestation of the OEIWG, however, does not simply challenge its political mandate. It also relates to a number of aspects that are captured by an analysis of the three components of the OEIWG's authority: legitimacy, connection to public interests and power. This section discusses each in turn.

Legitimacy

The major point of contestation of the OEIWG's authority relates to its legitimacy in two regards: first, empirical legitimacy, which is based on significant audiences' quantitative or qualitative signs of its recognition; and procedural legitimacy (cf. Binder and Heupel 2015; Tallberg et al. 2013), which relates to its proceedings and processes.

The OEIWG's *empirical legitimacy* is contested by referring to the narrow margin by which resolution 26/9 passed in the HRC, and the lack of support from states from the Global North and the business community:

> The proposal did not win the support of a majority of Council members, only a plurality. The home countries of the vast majority of the world's transnational corporations were opposed. The European Union and the United States not only voted against the resolution, describing it as polarizing and counterproductive; both also stated that they would not participate in the negotiating process. (Individuals/John G. Ruggie_Statement September 2014: 5)

In response to this contestation, proponents of the Treaty Process point to the strong support from civil society organizations around the world, which keeps the general idea of a binding instrument alive (INT 3/NGO/October 2019; INT 20/Human Rights Organisation/July 2020).

Whereas the resolution's narrow passage represents only a single point in time, challenging the OEIWG's *procedural legitimacy* addresses more dynamic issues. First and foremost, contesters criticize the OEIWG's failure to ensure broad participation and transparency, to include and acknowledge all stakeholders' contributions and to secure a neutral chairperson (INT6/Business/November 2019; INT2/State/October 2019; Intergovernmental\EU_Item3 (Adoption of Agenda and Programme of Work), 2017: 2–3). Critics also complain that the first treaty draft (the Elements) was published only three weeks before the session at which it was to be discussed in 2017: 'This is not a minor point. The success of an initiative as ambitious and complex as this is, in part, determined by the process. What is more, the substance of the [OEIWG] and the process are inextricably linked' (Business\BIAC [Business Industry Advisory Committee to the OECD] et al._written contribution, 2017: 9).

Another point of concern is the violation of diplomatic codes of conduct with regard to personal interactions. States from the Global North and business representatives complain that OEIWG supporters, especially civil society actors, engage in the practices of booing, insulting, aggressive behaviour and leaving the room. While the OEIWG does not directly participate in these practices, it is criticized for not inhibiting them (INT 2/State/October 2019, § 78, 131; INT 6/Business/November 2019, § 23–25).

The OEIWG and its supporters have responded differently to the contestation of its procedural legitimacy. Subsequent drafts were published and circulated further in advance –three months before their respective sessions. In addition, more information is now available on the OEIWG's website than previously. This information includes procedural steps, submission deadlines, guidelines for admission and even the dates and admission guidelines for closed intermediary meetings between the open annual sessions.

Other contestations of the OEIWG's procedural legitimacy have not been addressed. For example, Ecuador, which is not a neutral stakeholder, continues to chair the group. Stakeholders explain this with the fact that there are no official rules of procedure for UN working groups, but rather very different manners of engaging, which may include non-neutral chairs (INT 14/UN Organ/May 2020). Other stakeholders maintain that other UN fora do not consistently implement established UN standards either (INT 3/NGO/October 2019; INT 18/UN Organ/June 2020).

Supporters of the Treaty Process emphasize the OEIWG's openness, inclusiveness and transparency as a counter-narrative to contestations of the OEIWG's procedural legitimacy. They also denounce these contestations as a disguise for more substantial disagreements; they maintain that complaints about the OEIWG's legitimacy are merely strategic tools to weaken the OEIWG and its aim to create a binding instrument (INT 3/NGO/October 2019).

Connection to public interests

One reason for the deployment of strategic tools may be the normative connection to public interests in the form of human rights, which is shared by both proponents and contesters of the OEIWG.

The OEIWG's connection to public interests is established in the statement by Ecuador and other states from the Global South that initiated its founding. They emphasize 'human rights violations and abuses' and the need to 'provide appropriate protection, justice and remedy to the victims of human rights' (States\Group of Countries_Statement, need of an Int. legally binding I, 2013: 1). The Treaty Process deliberations accordingly refer to the need for a treaty that closes pressing gaps in the human rights regime.

Remarkably, objections to the OEIWG also refer to human rights as public interests: 'While we may not always agree with every stakeholder on how to achieve widespread respect for human rights, we are committed to advancing human rights … and we strongly believe in constructive dialogue to achieve this shared end goal' (Business\BIAC et al._written contribution, 2017: 9). This is because human rights represent an indisputable public interest; as such, their advancement cannot be nominally objected to. Therefore, the contestations do not question the content of the public interests to which the OEIWG refers.

Contestations of the connection to public interests instead invoke two other aspects. First, they cast doubt on the notion that the planned form of a binding instrument will be able to markedly improve the protection of human rights. Second, they call into question Ecuador's underlying intention as the OEIWG's chair to truly embrace public interests. Critics suspect that Ecuador and its allies only strategically refer to public interests, while

really pursuing their own interests (INT 2/State/October 2019; INT 6/Business/November 2019; INT 19/Business/July 2020).

Proponents respond to such contestations by emphasizing the importance of the Treaty Process for human rights generally. Direct reactions to contestations of the connection to public interests are rare. If they do occur, they take one of two forms. First, the argument that working group members are merely following strategic interests is turned around and ascribed to the contesters themselves. According to this view, the contesters pursue their self-interests disguised as public interests. A second type of response asserts that the chair's intentions are not decisive for the course and outcome of the Treaty Process.[8] According to this argument, it is instead important to determine what the participating stakeholders (and implementing states) make of the process – and to keep the discussion of a binding instrument alive (INT 3/NGO/October 2019; INT 20/Human Rights Organisation/July 2020).

Overall, the connection to public interests is not a dominant aspect of contestation, as it is shared by all stakeholders (at least nominally) – even those that are not known for embracing human rights (INT 17/UN Organ/May 2020, § 47).

Power

The OEIWG's power does not feature prominently in contestation either. If it is mentioned, it is contested in two opposing directions. First, some contesters argue that the group over-stretches its power by surpassing the mandate it was assigned by HRC Resolution 26/9, because it holds more than the three envisioned annual sessions, or because it adds environmental issues to the treaty (e.g. Business\IOE et al._Statement (Response to zero draft), 2018: 12), or even because it drafted the Zero Draft and its Optional Protocol (Business\IOE et al._Statement (Response to zero draft), 2018: 25f). The OEIWG largely ignores these contestations, as it simply continues to pursue its work and hold sessions. Supporters also point out that the mandate structures certain aspects of the OEIWG without explicitly limiting them, which is why one cannot speak of violating the mandate (e.g. Individuals\Scholars Open Letter to States_2018: 2).

Second, contesters argue that the OEIWG should even extend its power to modify its own mandate, so it can include domestic enterprises as well as transnational enterprises in a future treaty (Business\IOE et al._joint written contribution, 2016: 2). This demand for more power seems to be a strategy critics use to elucidate another issue: the scope (and hence the authority) of business enterprises. The next section discusses this matter in more detail.

The authority of business enterprises

One of the most delicate issues raised in the deliberations is the scope of business enterprises that a future treaty should address. Stakeholders disagree on whether to address only transnational enterprises (as suggested in the initiating statement, States \Group of Countries_Statement, need of an Int. legally binding I, 2013), or enterprises with a transnational character (as put forward by Resolution 26/9 and the first drafts),[9] or

[8]This also fosters analysis of reactions to contestation not only by the OEIWG, but by its supporting stakeholders as well.

[9]Resolution 26/9 (as well as the denomination of the OEIWG) addresses 'transnational corporations and other business enterprises'. A controversial and often-discussed footnote clarifies: '"Other business

whether to also include domestic enterprises (as the EU and other contesters strongly request – for example, in Intergovernmental\HRC_resolution_Explanation_of_vote_EU, 2014: 1). The European Union stipulates the inclusion of domestic enterprises as a condition *sine qua non* of its further participation in the OEIWG. A number of treaty sympathizers also back this demand (INT 20/Human Rights Organisation/July 2020). It reflects the worry that the treaty would adversely affect transnational parent companies situated in the Global North, while leaving domestic or state-owned enterprises (and their respective violations of human rights) in the Global South untouched.

Therefore, at first glance the arguments seem to be dichotomous. One side argues that only *transnational enterprises* (or those that undertake transnational activities) should be subject to a future treaty, while the other side demands that *all enterprises* should be bound by such a treaty, including small and medium enterprises, domestic companies and state-owned enterprises. However, the analysis of the deliberations shows that both sides address very similar issues and concerns. These similarities become visible when connecting contestation to the authority of business enterprises, and focusing on its triadic components. The debate over the scope of enterprises forms part of the contestation of the OEIWG, as its contesters vehemently reject the OEIWG's focus on transnational activities. At the same time, this critique transcends the camp of contesters. This elucidates how points of contestation contribute to the development of meanings and the (re-)construction of authorities. The remainder of this sub-section analyses the three components of business authority: power, legitimacy and connection to public interests.

Power

The power of companies is a major aspect of questions regarding which companies should be bound by a future treaty, and what their responsibilities should entail. The power of transnational companies is one of the most prominent arguments put forward in favour of focusing on transnational enterprises:

> The power and reach of TNCs stretches across markets and categories of workers: They simultaneously affect public sector and private sector workers, as well as social and informal economy workers … also increasingly the transnational delivery of services traditionally deemed under public control – such as utilities, healthcare and social services (NGOs\Global Justice Now et al._Position paper, 2018: 2).

Remarkably, the argument to include all enterprises also refers to the power of the latter. Both sides bring up the need to protect the victims of human rights violations and global governance gaps – that is, the adverse impact of business power. Thus concerns about the scope of business enterprises that a future treaty should apply to are not just intended to contest the OEIWG: they are put forward by contesters as well as by actors seeking to shape a future treaty that strengthens the human rights regime.

However, power plays a negative as well as a productive role, as the analysis of legitimacy and connection to public interests demonstrates.

enterprises" denotes all business enterprises that have a transnational character in their operational activities, and does not apply to local businesses registered in terms of relevant domestic law.'

Legitimacy

The deliberations not only address the illegitimate power of business enterprises in global governance gaps; they also refer to their legitimate power as global governance actors. Stakeholders from all sides continuously refer to legal, financial and global governance structures. Arguments to include all enterprises infer that a narrow focus on transnational activities would create inequalities between transnational and domestic companies, thereby violating the principle of non-discrimination and generating future regulation gaps, impunity or illegitimate control with regard to only some enterprises.

Arguments to focus on transnational activities, by contrast, invoke current inequalities resulting from powerful transnational enterprises that can dictate their preferences down the supply chain to local businesses. According to this perspective, focusing on transnational activities would create equality, not inequality. Proponents of this view furthermore argue that the term 'transnational activities' can include all companies, and all kinds of sub-contractors. The important point here is that both sides are concerned with the fair treatment of enterprises as legitimate global governance actors.

The OEIWG has recently begun to address the demand to include all enterprises. After the initial drafts ignored that demand, the Revised Draft from 2019 takes a major step towards reconciliation by including, 'except as stated otherwise, all business activities' (Art. 3.1). The Second Revised Draft from 2020 sharpens this reconciliation: 'This (Legally Binding Instrument) shall apply to all business enterprises, including but not limited to transnational corporations and other business enterprises that undertake business activities of a transnational character' (Art. 3.1). This draft also provides for national legislation that determines due diligence obligations for companies 'commensurate with their size, sector, operational context and the severity of impacts on human rights' (Art. 3.2). It now explicitly addresses state-owned enterprises (SOEs) (Art. 1.3), which according to one observer should 'allay the concerns of private transnational corporations (TNCs) that the treaty would regulate only private companies, thereby giving SOEs an unfair competitive advantage' (Cassel 2020).

The OEIWG thus creates a middle ground between competing demands to address either only transnational companies or all enterprises. This 'hybrid option' (NGOs \IFHRL_Tides Center Project_ESCR-Net_written statement, 2015: 5; Individuals\Surya Deva_Professor University of Hong Kong_written contribution, 2016: 2) considers aspects from both sides of the argument. The OEIWG thus is able to address and reconcile multiple concerns – the power of transnational (and other) enterprises, and their fair and appropriate treatment as legitimate global governance actors.

Connection to public interests

The business power to affect human rights includes adversarial as well as positive effects. This set of arguments relates to the question of whether – and, if so, how – companies and their practices (should) connect to public interests. This question triggers a discussion of companies as private or public actors, as the connection to public interests transcends their role as purely private non-state actors. HRC Resolution 26/9 elaborates its focus on transnational enterprises because 'transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth'. Arguments to include all enterprises work similarly. Hence both sides perceive companies as contributors to public interests.

At the same time, the deliberations demonstrate a clear awareness of the difference between public and private roles (INT 20/Human Rights Organisation/July 2020).

Proponents of the Treaty Process emphasize that enterprises' influence extends beyond the private realm due to the sheer extent of their power, the ways in which they can put pressure on states, their ability to violate human rights and their positive contributions to society:

> whereas corporations are one of the major players in economic globalisation, financial services and international trade, and are required to comply with all applicable laws and international treaties in force and to respect human rights; whereas these business enterprises as well as national corporations may at times cause or contribute to human rights violations … whereas they may also have an important role to play in offering positive incentives in terms of promoting human rights, democracy, environmental standards and corporate social responsibility. (Intergovernmental\EU Parliament_Resolution to EU Input in treaty progress, 2018: 6)

Conversely, contesters emphasize the normative and legal limits of business practices that differentiate private business roles from state responsibilities for public interests:

> Policing and prosecuting violators of human rights is the primary responsibility of governments. However, the draft treaty expects MNCs, through due diligence and otherwise, to prevent human rights violations. (Business\IOE_Analysis, 2018: 20)

> Indeed, companies do not have the capacity or popular, democratic mandate to police and remedy the operations of every supplier that is connected to the supply chain. That is the province of sovereign States. (Business\IOEPanel VII, 2017: 2)

> Only governments have the authority and mandate to ensure people's fundamental welfare and dignity. This task cannot be delegated to companies. (Business\IOE_ follow-up response to elements, 2018: 3)

In this sense, contesters are eager not to transcend the private realm of business conduct. Implicitly, however, their demands for enterprises extend past the private realm. This is especially visible in the call for enterprises to be actively included in the OEIWG's deliberations, even if they are not accredited by the UN Economic and Social Council (INT 6/Business/November 2019, § 13). While this demand parallels struggles by civil society actors for inclusion in terms of democratic participation, it represents a fundamental challenge to the dichotomy between public and private at the global level because it is justified by the companies' contribution to public interests.

Furthermore, the careful distinction between private (business) and public (state) roles not only aims to prevent enterprises from expanding their duties. It also draws attention to the democratic necessity of such a distinction in order to prevent firms from assuming further rights and powers, and to safeguard public interests against private ones. Accordingly, proponents of the Treaty Process warn that delegating the fulfilment of public interests to private enterprises risks undermining democracy:

> Finally, TNCs are not democratic and transparent entities. They ferociously oppose submitting to binding human rights norms. They defend private interests (especially those of a handful of majority shareholders) and not the public interest. They can also be ephemeral, can go bankrupt, can be bought by other entities (or by

governments), can transform themselves (completely change orientation) or disappear. (NGOs\Global Campaign _written contribution_Theme 1, 2016: 4)[10]

These arguments illustrate the complexity of private actors referring to public interests, which cannot be captured by a simple public–private dichotomy.

Regarding the worries of simply equating private business responsibilities with state duties for public interests, the OEIWG quickly turned away from the initial idea to directly address enterprises via international law (which some of its sympathizers deplore – INT 20/Human Rights Organisation/July 2020). It instead refers to the state's duty to safeguard public interests and to respect, protect and fulfil human rights obligations. The OEIWG therefore develops obligations for states, but takes seriously the immense impact of business behaviour on human rights and public interests.

The authority of the UN Guiding Principles

The UNGPs represent a major step in the consolidation and recognition of the global BHR regime. While their authority seems to be fully established, the strength of each component varies – as do the reference and (re-)construction of its components in the contestation in and of the OEIWG.

Legitimacy

The UNGPs' consolidated legitimacy is demonstrated by criticism of the OEIWG for its supposed lack of regard for them. Such contestations do not question the authority of the UNGPs; the OEIWG's authority is instead contested through the UNGPs' legitimacy. This contestation started at the same HRC session that initiated the OEIWG in 2014. Resolution 26/22 from the same meeting emphasized the legitimacy of the UNGPs and extended the mandate of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, which was created to promote their dissemination and implementation. Opponents of the prospective OEIWG feared that it would undermine the consensus of the global BHR regime represented by the UNGPs' legitimacy: 'this resolution is a threat to the Guiding Principles themselves. To be clear, it is not complementary' (States\USA_Statement 2014 (to Resolution 26/9), 2014: 2). This kind of contestation of the OEIWG continued in subsequent deliberations.

Strikingly, this contestation mirrors the OEIWG's perspective in its initial phase. The OEIWG framed the Treaty Process as contesting the UNGPs' authority, especially their power (discussed in further detail below). An expert from the United Nations concluded that both sides of the debate committed the 'original sin' of designating the UNGPs and the OEIWG as contradictory rather than complementary in the initial phase (INT 14/UN Organ/May 2020).

[10]Similarly: 'For example, obligatory procedures for periodic assessment of subsidiary enterprises in supply chains, actions aimed at risk reduction, early warning system, set of actions for immediate redress, and a follow up mechanism for implementation would be very valuable based on my experience. However, risk assessments of human rights violations or abuses by TNCs/OBEs are also proposed. This I find problematic in practice. This is ripe for manipulation by companies. States must ensure the integrity of information – both in the risk assessment itself and the underlying information. It should clarify how assessments and the integrity of information can be improved to provide greater clarity and certainty for those at risk of harm. This is an area of great concern, and where, unfortunately, there is much room for improvement' (UN fora\UN Special Rapporteur on hazardous substances and wastes_Panel, 2017: 4).

It soon became clear that the OEIWG could not successfully challenge the UNGPs' legitimacy. The OEIWG was thus forced to adapt its strategy. At the last minute during its first session, the OEIWG approached members of the UNGP-related Working Group to appear at the podium to demonstrate a reconciliation between the UNGPs and the Treaty Process (INT 5/UN Organ/November 2019). In its subsequent annual sessions, the OEIWG held regular panels on the compatibility of the Treaty Process and the UNGPs.

The UNGPs' legitimacy also gives substance to other points of contestation of the OEIWG. The contestation of the OEIWG's procedural legitimacy (as discussed above) stands out in this regard:

> The only reason the UNGPs ever had any traction is the manner in which they were developed. And that is a very good lesson for everybody that the narrative has changed. Number one, the traditional principle of naming and shaming is no longer legitimate. Nobody actually sees it as valid. Just by naming and shaming. And the other traditional way of developing a treaty or developing a document as negotiated by states and then handing it over just does not seem to be the most effective way. And what is becoming fairly evident is the recognition of the role of all actors as part of an international process. And in the business and human rights field that becomes very clear. And it became very clear with the UN Guiding Principles. There is just no way you can actually gain legitimacy unless you involve the people who eventually have to work it. And that is a good lesson from the UNGPs. (INT 5/UN Organ/November 2019, § 7)

The legitimacy of the OEIWG is contested by measuring its procedures against comparable UN working groups, and against the UNGPs. In particular this includes the measures of transparency, broad participation and a decent social interaction among all stakeholders. Here too, the UNGPs' overwhelming legitimacy provides a yardstick for the contestation and subsequent (re-)construction of the Treaty Process.

Connection to public interests

Despite their shortcomings (as discussed below regarding their power), the UNGPs are considered overwhelmingly legitimate due to their contribution to public interests in the form of human rights, as they managed to establish and consolidate the global BHR regime. They provide the basis for keeping the BHR discussions on-going. They also introduced standards such as due diligence as key concepts in the BHR deliberations, thereby providing a pivotal basis for the development of further BHR instruments, including binding ones. Supporters of the Treaty Process acknowledge this contribution: 'I appreciate the concept, because it establishes a standard of process … that provides powerful actors with orientation, using a language they are familiar with. It establishes management processes … It will not turn the whole global economy into a sustainable system, but it is a first building block' (INT 4/NGO/October 2019, § 57, also cf. INT 11/SOE/February 2020, § 17). Hence, the UNGPs' widely acknowledged connection to public interests does not play a vital role in the contestation or justification of the OEIWG.

Power

At the same time, supporters of the OEIWG do criticize aspects of the UNGPs (including their definition of due diligence) because they doubt their effectiveness (INT 1/Individual Expert/April 2019, § 6, INT 3/NGO/October 2019, § 88). This is connected to a more

general concern regarding the power of the UNGPs, which provides a major basis for (re-) constructing the authority of the OEIWG. This perspective takes issue with the non-binding character of the UNGPs as soft law. The Treaty Alliance, the most prominent association of civil society organizations in favour of the treaty, demonstrates this perspective:

> The [UNGPs] make clear that enterprises must take responsibility for the negative human rights impacts of their business activities – not only within their own enterprises, but also in relation to their subsidiaries and throughout their entire supply chain … However, until now, these standards have not been mandatory for business, and to date only a few enterprises have begun to implement meaningful human rights due diligence. (NGOs\Treaty Alliance Germany_written contribution, 2017: 8)

Given the UNGPs' strong legitimacy and connection to public interests, paired with their lack of power, OEIWG supporters (re-)construct the OEIWG's authority not by aiming to replace, but rather to resume and extend them. This amounts to suggesting a complementary BHR regime in which the UNGPs and the future treaty supplement each other, with the latter filling the power gap of the former.

V. The (re-)construction of authorities

Authority in its varying components

The analysis reveals clear differences in the scope and emphasis of the individual components of authority. These differences facilitate further discussion of the meanings and effects of the authorities.

The connection to public interests of both the OEIWG and the UNGPs plays only a minor role in the deliberations. While stakeholders do discuss the question of how to strengthen human rights, the connection to human rights as a public interest is not at stake. This is because the human rights frame is a widely shared point of reference (at least nominally). This result contrasts with research that diagnoses a serious contestation of global governance standards such as human rights (Ikenberry 2018; Mearsheimer 2019). Against this background, it is remarkable that deliberations about developing a binding human rights instrument do not call the broader normative reference into question (even though external opponents of the Treaty Process as well as actors who are not known for their adherence to human rights norms have been included in the empirical analysis).

The uncontested normative framework of human rights as a public interest yields another effect. As shown above, the authority of the UNGPs fuels the contestation of the OEIWG; its peculiar (re-)construction can strengthen the OEIWG. Due to the uncontested human rights frame, this constellation also works the other way around: the Treaty Process can strengthen the UNGPs' authority. This is because any contestation of the OEIWG must necessarily revert to the UNGPs (INT 17/UN Organ/May 2020): an actor can embrace the UNGPs, or the OEIWG, or both, but they cannot simply leave the normative framework of (business and) human rights.

States from the Global South fiercely invoke the human rights frame as a reference point for public interests. This constellation therefore challenges the traditional conception of a North–South (or Western vs. non-Western) divide that ascribes human rights violations to the latter, and human rights values to the former. It therefore calls the widely

shared tendency to equate human rights with Western values into question (also cf. Mende 2021).

Yet the connection of business enterprises to public interests is controversial due to the complex involvement of private actors with public interests. This complexity is intensively discussed within the BHR regime and in global governance research, which seeks to transcend the apparent dichotomy between public and private (Crane, Matten and Moon 2008; Cutler 2018; Mende 2020c). This constellation gives the OEIWG the unique chance to distinguish itself from other global governance institutions by developing hybrid approaches that accommodate public and private roles, without simply blending or merging them.

The analysis shows that the OEIWG's power is not contested, most likely due to its general lack of power: states cannot be forced to participate in, let alone ratify or implement, a future treaty. Then again, the OEIWG's mandate to create a binding instrument signifies at least its potential power. This also explains its strong support from civil society. Civil society actors even knowingly disregard some of the issues of concern that they share with contesters. This support contributes significantly to the OEIWG's legitimacy, which serves as a major reason for its contestation. Given its powerlessness, if it had no legitimacy contestation would simply not be necessary. Instead, contestation also contributes to its consolidation of the OEIWG (Wiener 2014).

In addition, the OEIWG's legitimacy intersects with the UNGPs' lack of power. Some critics claim that the latter is even the very reason for the UNGPs' strong legitimacy (cf. Deva and Bilchitz 2013; Ratner 2020: 165). At this point, the conceptual approach to power matters, as it can turn the evaluation of power (or the lack thereof) upside down (INT 14/UN Organ/May 2020). Based on a realist definition of power, the UNGPs are powerless because they are voluntary, and the OEIWG is potentially powerful given that it seeks to draft a legally binding treaty. A constructivist reading of power that includes ideational and discursive dimensions (cf. Holzscheiter 2016; Mende 2020a), however, can conclude that the UNGPs are powerful due to their broad normative effects, whereas the OEIWG exhibits a lack of ideational power. An analysis of their respective authority as consisting of the three components – power, legitimacy and connection to public interests – further sharpens the analysis. The legitimacy of each intersects with its power: the UNGPs' normative power springs from their broad acknowledgement (which might be related to their lack of judicial power), while the OEIWG's ideational power (along with its authority) increases with its growing legitimacy.

The (re-)construction of related authorities

The analysis demonstrates that the OEIWG deals with contestation by actively (re-) constructing not only its own, but related authorities. The processes of (re-)construction exhibit different degrees of emphasis of each of the invoked authorities of enterprises, the UNGPs and the OEIWG.

The contestation of the OEIWG that invokes the authority of business enterprises fuels the (re-)construction of business authority with a hybrid approach. This results from the dichotomous constellation in international law in which enterprises, as private actors, enter the public domain of international human rights (Mende 2020c). The deliberations illustrate the limits of the dichotomy between public and private, and suggest models that bridge the two. Such a hybrid approach to business authority can significantly strengthen

the OEIWG. It can use the contestation process to (re-)construct a new perspective on business authority.

The UNGPs also strongly advocate linking state and business responsibilities. The Treaty Process focuses on state duties and binding regulations. While this appears to be a more pragmatic approach, and therefore more likely to attract state approval (Kirkebø and Langford 2020: 182), the Treaty Process has the potential to do more. It can strengthen the responsibilities of both public and private actors without equating the two. It can instead develop approaches that do not reduce companies to private actors *or* equate them with public actors. This builds on the UNGPs' perspective of business actors as 'organs of society' (United Nations 2011: 1). The further development of such an approach by the OEIWG can take the role of enterprises for public interests seriously – both adversarial and productive.

The contestation of the OEIWG that frames the UNGPs as their counterpart gives the OEIWG and its supporters the chance to (re-)construct the UNGPs' authority. Initially, the OEIWG failed when it tried to deny the UNGPs' authority. However, by acknowledging the UNGPs the OEIWG can succeed: as a supplement to, rather than a negation of, the UNGPs. The UNGPs' legitimacy can serve to accelerate the OEIWG's authority, when the former's lack of power is used to justify the latter's aim to create a binding instrument. This (re-)construction places contesters of the OEIWG who continue to claim that the OEIWG undermines the UNGPs in dire straits.

Finally, direct contestations of the OEIWG's authority mainly relate to its legitimacy. The OEIWG neglects several aspects of this contestation, partly constructs them as strategic disguises for other issues, and partly adapts its practices. Overall, however, this line of criticism does not play a dominant role in the working group's reactions. Rather, the OEIWG tends to consolidate itself in reaction to this contestation by (re-)constructing the related authorities.

VI. Conclusion

This article has discussed the constellation of contestation and authority in global governance. The single-case study of the OEIWG as part of the BHR regime demonstrates two points. First, it examines three components of authority – power, legitimacy and connection to public interests. The resulting fine-grained analysis reveals that each component has a different emphasis and scope, and affects authority in different ways.

Second, the contestation of the OEIWG not only involves a direct contestation of the working group's authority. Rather, the authorities of both business enterprises and the UNGPs are frequently invoked as auxiliaries of contestation and justification. The OEIWG's ability to successfully deal with contestation hinges on its ability to (re-) construct not only its own authority, but the auxiliary authorities as well. The contestation of the OEIWG and its resulting (re-)constructions of authority can therefore have decisive effects on the global BHR regime, even beyond the immediate scope of the Treaty Process. While this article does not measure the final or objective success of these processes (not least because the Treaty Process is still ongoing), it discusses pathways and potential areas for success that are mirrored in the consolidation of the OEIWG and its pursuance.

Ultimately, this article has demonstrated that the contestation of a global governance institution involves the (re-)construction of multiple related authorities. This allows drawing two conclusions with regard to examining the constellation of contestation

and authority in global governance more generally. First, it allows integrating the authority of institutions and actors as well as norms, without simply equating them. An analytical distinction helps clarify this point. The process of contestation and justification (i.e. responding to contestation) takes place between actors (see the upper level in Figure 1). Actors (including global governance institutions, their supporters and allies) are involved in the deliberations and practices of contestation and justification. The subjects of contestation, however, include the authorities of both actors and norms (see the bottom level in Figure 1). Dissecting these authorities into the components of legitimacy, power and connection to public interests helps capture their differences as well as their similarities.

The second conclusion is that the related authorities are (re-)constructed as a result of contestation and justification. This explains how contestation can affect global governance institutions, actors and norms beyond the specific field of contestation. The scope of related authorities usually includes the authority of the contested actor itself (A-a). It may also involve the authority of the contesting actor (B-a). Finally, it includes other authorities (X-a, Y-a, Z-a). Their relationship to the actor of contestation varies, and can serve as a starting point to analyse other cases.

Further studies can proceed by measuring the success of the contested institution as well as the effects of the (re-)construction of authorities in fields beyond the immediate scope of deliberations. As a point of departure, this article suggests extending the study of contestation of a global governance institution to multiple related authorities and their (re-)construction.

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