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Article

Contested Norms in Inter-National Encounters: The 'Turbot War' as a Prelude to Fairer Fisheries Governance

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Abstract
This article is about contested norms in inter-national encounters in global fisheries governance. It illustrates how norms work by reconstructing the trajectory of the 1995 'Turbot War' as a series of inter-national encounters among diverse sets of Canadian and European stakeholders. By unpacking the contestations and identifying the norms at stake, it is suggested that what began as action at cross-purposes (i.e. each party referring to a different fundamental norm), ultimately holds the potential for fairer fisheries governance. This finding is shown by linking source and settlement of the dispute and identifying the shared concern for the balance between the right to fish and the responsibility for sustainable fisheries. The article develops a framework to elaborate on procedural details including especially the right for stakeholder access to regular contestation. It is organised in four sections: section 1 summarises the argument, section 2 presents the framework of critical norms research, section 3 reconstructs contestations of fisheries norms over the duration of the dispute, and section 4 elaborates on the dispute as a prelude to fairer fisheries governance. The latter is based on a novel conceptual focus on stakeholder access to contestation at the meso-layer of fisheries governance where organising principles are negotiated close to policy and political processes, respectively. The conclusion suggests for future research to pay more attention to the link between the 'is' and the 'ought' of norms in critical norms research in International Relations theories (IR).

Keywords
background experience; contestation; cultural validation; fisheries governance; legitimacy; norms; stakeholders; sustainability; turbot war; UNCLOS

Issue
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1. Introduction

This article is about norms in international relations. It understands 'inter-national relations' as the interactions between agents of distinct 'national' root context (as opposed to transnational relations where that distinction is blurred). As both socially constructed and structuring elements that are intrinsically interrelated with these agents, norms entail a dual quality. As part of the layered normative structure of meaning-in-use norms are re-/enacted through social interaction. As such they form the key link between agent and structure in any society. The following discusses the 1995 'Turbot War'[1] as a series of inter-national encounters among stakeholders in global fisheries governance. By unpacking the contestations and identifying the norms

[1] Publications on the 'Turbot War' abound, many of them reflecting emotional concerns of the authors, or a summary of these, as reflected among others by the *Wikipedia* entry (see: https://en.wikipedia.org/wiki/Turbot_War). A most notable academic account of the conflict has been presented by Allen L. Springer (1997). Section 3 of this article presents more detailed information of the event.

that were at stake, the article suggests that what began as action at cross-purposes, holds the potential for fairer fisheries governance based on the ultimately shared concern for the balance between the right to fish (UNCLOS Art. 116)[2] and sustainable fisheries. The path to get there involves careful reconstruction of the contestatory practices displayed by all involved parties. The article presents a framework that allows researchers to elaborate on procedural details (i.e. contested norms in inter-national encounters) and normative issues (i.e. the right for stakeholder access to regular contestation). To that end the contestations of three types of norms in the sector of fisheries governance are addressed by agents including two sets of state-plus stakeholders in Canada and in Europe. As will be further detailed with reference to the research framework and the case study respectively, the contested norms include sustainability, responsibility to protect fish-stock from extinction as well as the rule of law, as norms that are categorised as *type 1*; and the 200NM limit of the Exclusive Economic Zone (hereafter: EEZ), mesh-size and total allowable catch (hereafter: TAC) as *type 3.* Notably, however, the negotiation of the specific weighing and reasoning for the details of TAC includes agreement on individual quotas, percentages and regulatory measures, and therefore requires regular contestation in various discursive spaces at the meso-layer. This qualification as interactive and procedural suggests moving the TAC into the category of *type 2* norms. The case evaluation will return to this important point in due course. Other *type 2* norms that would facilitate a via media such as the precautionary approach[3] or regular access to contestation were less vital to the dispute itself, however they acquired a central role in the settlement (compare Tables 1 and 2 below).

The article applies the ideal typical distinction of norms types according to their degree of specification, generalisation and moral reach. It suggests that better understandings of the work of *type 2* norms pave the way towards replacing cross-purpose contestations at the micro- and macro-layers of global governance by common purpose interaction at the meso-layer.[4] To that end the article undertakes two steps: first it presents the key elements of critical norms research which are illustrated by the case of the 1995 'Turbot War', and second it evaluates the case study with regard to the normative goal of filling the legitimacy gap of fisheries governance by enhancing conditions for stakeholder access to contestation. Three distinct scenarios are at play: the domestic Canadian scenario, the regional European scenario and the inter-national scenario. The scenarios are linked by the common reference to the general narrative of the 'Turbot War'. The dispute is presented through the reconstruction of—mostly—inter-national encounters norms of fisheries governance are contested. By distinguishing three scenarios of contestation, which are interrelated through moments of interaction in the dispute, the article puts an emphasis on the socio-cultural contingency of distinct perspectives.

Each perspective informs distinct contestatory practices, as it draws on and contributes to the social construction of the narrative, and each is constitutive for the normativity that ultimately enhances or reduces the legitimacy of the norms of fisheries governance. By disaggregating these contributions it becomes possible to account for diverse background experiences. As potential sources of conflict these have also been referred to as 'latent' contestation.[5] Subsequently, the respective storytellers' narratives about wars differ: notably, the endpoint is often less disputed than the source of conflict. The 'Turbot War' was no exception from this pattern. Like all narratives it had a beginning, a high point and an end.[6] With regard to the timeframe, it is notable, however, that while the dispute reached its high point and settlement in 1995, a legal case brought before the International Court of Justice (ICJ) on behalf of one conflicting party, only came to an end in 1998 with the ICJ declaring that it had "no jurisdiction to adjudicate upon in the dispute".[7] The source of the dispute was not straightforward. For example, according to the Canadian narrative the source of the conflict was situated much further back in the past than by the Europeans' account[8]. And as far as the legitimating reference for the war-like activities was concerned, notably, the Canadian narrative centred on the more vaguely defined sustainability norm (*type 1*), whereas the European narrative centred on the set of

[2] United Nations Conventions on the Law of the Sea (hereafter: UNCLOS), Article 116 on the "Right to fish on the high seas stipulates: All States have the right for their nationals to engage in fishing on the high seas subject to: (a) their treaty obligations; (b) the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63, paragraph 2, and articles 64 to 67; and (c) the provisions of this section."

[3] Notably and importantly the "precautionary approach" was introduced at the UN conference on straddling stocks following the dispute in 1995. For details, see Northwest Atlantic Fishery Organization (2016b).

[4] For details of this novel research focus on the meso-layer in global governance in distinct sectors including security, climate and fishery see Wiener (2014, p. 76).

[5] I am grateful to Peter Niesen for suggesting this term.

[6] On the concept of narratives compare generally Della Sala (2015), and especially with regard to the concept in international relations Miskimmon, O'Loughlin and Roselle (2014).

[7] See International Court of Justice (1998); see also: "Judgment of 4 December 1998" in United Nations (UN, 2003).

[8] The following sections elaborate in more detail about the term 'European' which especially in media was often used in multiple ways, thereby blurring knowledge about the actually involved agents.

clearly defined *type 3* norms at first, and was pitched by reference to the rule of law (*type 1*) at the high point of the political dispute. The interplay of the distinct perceptions of background, substance and timing of the conflict is captured by a 'cycle of contestation' all involved stakeholders were situated throughout (see Figure 1). The effect of this interplay is then projected onto the issue of normative ownership. The former displays the conceptual framework for the 'is', the latter the framework for the 'ought' (compare sections 3 and 4 for the case study and the evaluation, respectively).

As an illustrative case, the unpacking of the 'Turbot War' narrative suggests that the reconstruction of distinct norm contestations and their critical evaluation advance insights about the interplay between formal validity and perceived validity of norms, and how this relation affects stakeholder behaviour. By reconstructing norm contestations in context and taking into account the link between the 'is' and the 'ought', the argument suggests moving beyond the task of accounting for normative meanings (i.e. what is) and adding the normative question of how to enhance stakeholder participation. The remainder of the article summarises the core elements of the conceptual framework in section 2. It then summarises the events of the 'Turbot War' with a special focus on inter-national encounters and contested norms of fisheries governance in section 3. The concluding section 4 turns to the normative reflection of the link between the 'is' and 'ought' of norms with a view towards further research on norms in global governance.

2. Conceptual Framework: Critical Norms Research

This article's normative proposition to reconstruct disputes in global governance as a prelude for fairer governance builds on the three seminal conceptual contributions of IR constructivism: first, the impact of the socio-cultural environment on state behaviour;[9] second, the role of interactive practices of arguing and internalisation with regard to agents' norm implementation and entrepreneurship;[10] and third, the advanced methodology to account for practices and meaning.[11] While not always in agreement these three major contributions enabled norms researchers to work with a set of concepts and methods to grasp the interplay between material and social facts (Ruggie, 1998), and therefore to better account for the conditions of international interaction as socially constructed. This rich empirical background has led some researchers to engage in the utilitarian study of "norm robustness" despite contestation[12]. By contrast, this article is less interested in the perseverance of a norm than in the effect of normative contingence.[13] The former would pre-empt the assumption about whether a norm is a 'good' or a 'bad' norm, while the latter works with the assumption that norm-ownership enhances normative legitimacy.[14] While the universality vs. particularity argument has been discussed widely for example in the field of citizenship studies,[15] the interplay between both has yet to become an issue of central interest in the field of norms research.

Notably and despite a wealth of methodologically sound research about cultural meaning constructions critical norms researchers[16] still tend to leave addressing the general normative issues of their findings to political theorists.[17] To counter that trend and further develop the innovative potential of critical norms research this article suggests linking normative quality with normative purpose of norms. To that end it centres on the questions why a norm should be followed and, whose norms should count. Taking into account the well-documented knowledge about cultural diversity and normative meanings that in different cultural contexts, the present article sheds light on the normative follow-up. It suggests linking knowledge about the constitution of norms (what is visible) with the normative question of how to enhance legitimacy in global governance (what is possible). The following summarises the key conceptual elements of critical norms research to that end. They include *first* the major typological distinctions about the typology of norms for interdisciplinary research on international relations, three distinct dimensions along which norms are practiced such as legal validity, social recognition and cultural validation, as well as their interrelation based on allocation on the cycle of contestation. *Second*, they

[9] Compare Checkel (1998); Katzenstein (1996); Koh (1997); Kratochwil and Ruggie (1986).

[10] Compare Liese (2009); Müller (2004); Risse (2000).

[11] Compare Engelkamp, Glaab and Renner (2013); Hofius (2015); Hofius, Wilkens, Hansen-Magnusson and Gholiagha (2014); Hofmann (2015); Holzscheiter (2013); Müller and Wunderlich (2013); Wolff and Zimmermann (2015); Zimmermann and Deitelhoff (2015).

[12] See Zimmermann and Deitelhoff (2015).

[13] See especially Bjola and Kornprobst (2010); Kornprobst (2012), as well as Hofmann and Wisotzki (2014, p. 3).

[14] See generally for a critical approach that seeks to enhance the empowerment of 'citizens' in 'struggle' Tully (2002) and Tully (2008, p. 5); and especially for the concept of norm-ownership in global governance the work of Park and Vetterlein (2010).

[15] See for example Soysal (1994); Somers (1995); Hanagan and Tilly (1999).

[16] Compare especially the current 'ZIB Debate' in the German IR journal *Zeitschrift für Internationale Beziehungen* in 2013–2015.

[17] Notwithstanding pro-active engagement with political theory that is well reflected by the growing field of International Political Theorists, norms research in particular has yet to pick up on this research.

involve the concept of background experience that allows zooming in on the reconstruction of constitutive cultural practices for latent and open contestations of norms. The following details these elements in their turn.

2.1. Typological Distinctions

The typology of norms distinguishes three types of norms: fundamental norms, organising principles, and standards/regulations. Like all ideal types, these norm types have been derived inductively with regard to two questions[18]: *first*, what is the moral reach of the norm (high—medium—low), and *second*, what is the expected degree of contestation of a norm (high—medium—low)? Answering the first question quickly finds human rights, the rule of law, democracy, sovereignty and other leading principles falling into the *type 1* group of norms which have been identified as "fundamental norms" (Wiener, 2008, p. 66). All share a high degree of moral substance with wider implications for theory and practice, and they also share a significant lack of specification. The latter implies that their validity remains to be specified by adjacent norms and specific procedures which stand to be implemented by additional flanking action. By contrast norms with low moral implications are those that are most clearly defined such as, for example, emission standards entailing specific percentages, fishing quotas, or electoral details. All these fall into the group of *type 3* norms of standards/regulations. In comparison, *type 3* norms are more encompassing than *type 1* norms with regard to their respective 'validity' detail. While knowledge of fishing quota or mesh-size regulations entails all the information required by the designated norm-follower in order to implement the norm, the knowledge about sustainable fisheries does not. That is, while the fundamental norm of sustainability may be adhered to as a taken-for-granted norm that enjoys wide social recognition, its implementation requires a variety of flanking actions. These flanking measures' success depends on the socio-cultural contexts in which they are implemented. They add contingency to the way fundamental norms work in inter-national relations (compare Table 1).

This leads to answering the second question about the degree of contestation expected with regard of the distinct groups of norms. It is related to the answer to the first question insofar as the lower the degree of validity detail, the higher the required flanking measures in order to achieve implementation, and, accordingly, the higher the chance of contestation with regard to each of these measures. That is, contestation is higher with regard to fundamental norms than with regard to standards or regulations. While the latter may be more easily rejected, i.e. by jaywalking, over-fishing or skipping a ballot, objection to fundamental norms usually involves a chain of contestatory practices that refer to distinct flanking measures including organising principles (*type 2* norms) and standards/regulations (*type 3* norms). All can be brought to the fore by distinguishing normative dimensions and practices of norm validation that are attached to them. According to the typology, organising principles (*type 2* norms) such as for example common but differentiated responsibility (CBDR) in climate governance[19] evolve through policy or political practices. They are placed on the meso-layer of global governance where they fill the space that links the universal quality of fundamental norms, on the one hand, with the particular quality of standards and regulations, on the other. In this linking role, they are most important for filling the legitimacy gap.

2.2. Practice Dimensions of Norms and The Cycle of Contestation

The concept of 'validating dimensions of norms' reflects the interactive quality that is bound by the (re-) enacted "normative structure of meaning-in-use".[20]

[18] Compare Goodin and Tilly (2006); Tilly (2006).

[19] See especially the account offered by Brunnée and Toope (2010, p. 130ff).

[20] See Jennifer Milliken's seminal article on discourse analysis in IR (Milliken, 1999); compare also Weldes and Saco (1996).

Table 1. Norm-types in global fisheries governance.

Norm	Type / Layer	Fisheries	Moral Reach	Contestation
Fundamental	*Type 1* / Macro	Sustainable Fisheries Right to Fish (UNCLOS Art. 116)	Wide	High
Organising Principle	*Type 2* / Meso	*Precautionary principle** *Access to contestation*** *TAC*	Medium	Medium
Standardised procedures/Regulations	*Type 3* / Micro	TAC, EEZ, Quotas Mesh-size	Narrow	Low

Notes: *Established by NAFO in 1995 following the Turbot War; **Proposed organising principle (see e.g. Wiener, 2014, pp. 58-62). Source: Wiener (2008, 2014).

It is of key importance for the separate reconstruction of distinctive social practices vis-à-vis norms. Three such practices have been identified by norms research in the social sciences: formal validation, social recognition and cultural validation. *Formal validation* entails validity claims with regard to formal documents, treaties, conventions or agreements. In the context of international relations, formal validation is expected in negotiations involving committee members of international organisations, negotiating groups, ad-hoc committees or similar bodies involving high-level representatives of states and/or governments. *Social recognition* entails validity claims that are constituted through interaction within a social environment. The higher the level of integration among the group, the more likely becomes uncontested social recognition of norms. Different from formal validation where validity claims are explicitly negotiated, social recognition reflects mediated access to validity claims qua prior social interaction within a group. *Cultural validation* is an expression of individual expectation that is informed by individually held background experience. Given the diversity of individual expectations in inter-national relations, this dimension is an important indicator for norm conflict. Yet, it remains largely overlooked by current norms research. Each dimension has evaluative potential with regard to each of the three norm types. Notably—and this is the central emphasis of the critical approach to norms research that is derived from James Tully's public philosophy[21]—access to these three dimensions is not equally shared among all stakeholders. This point is elaborated with reference to the figure of the 'cycle of contestation' (see Figure 1).

As the cycle demonstrates, the position of the claims-maker vis-à-vis the norm decides about stakeholder access. This position is distinguished with reference to the *stage* of norm implementation (i.e. constituting, referring and implementing) and the situation within a given *social order* (i.e. government representatives, social group, individual). For example, at the treaty making stage where government representatives of different national provenience come together, an individual will be able to evoke negotiating power her access to formal validation and cultural validation of sustainable fisheries, and pending on the negotiating group's frequency of gatherings, relate to and shape social recognition as well. By contrast, at the implementing stage at the micro-layer of global governance, individual fishing folk will be able to accept or oppose sustainable fisheries based on social recognition and follow or oppose the fishing quota. There is no room left for evoking powers of negotiating. The cycle of contestation demonstrates the potential positions in fields of global governance. By shedding light on the position of stakeholders, critical norms research moves on from questions about motivation (question: why comply with norms?) to a perspective on stakeholders (question: who has access to negotiation?). Braising a question about access it becomes possible to reach beyond "competent practices" to engage with the "principle of contestedness".[22] It implies broadening the perspective to include a focus on the empowerment of stakeholders to actually partake validation.

2.3. Background Experience

As the cycle of contestation demonstrates, access to contestation is differentiated by contingency. The broader access to the three validating dimensions of a

[21] See Tully (2002) and for the project of adopting Tully's Public Philosophy in a New Key to IR see especially the work of Havercroft (2012) and Wiener (2008, 2014, 2016a).

[22] For this sociological concept see Sending and Neumann (2011) as well as Adler and Pouliot (2011); for the latter principles of contestedness see Wiener (2014, pp. 58, 79ff).

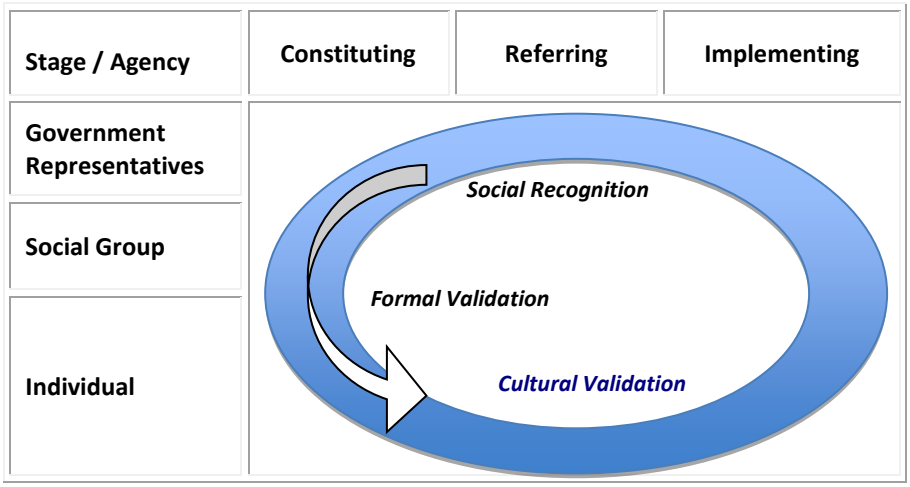

Figure 1. The cycle of contestation. Source: Wiener (2014, p. 36, Figure 2.1).

norm become for stakeholders, the higher the potential for norm-ownership. In this scenario "background experience" (Wenger, 1998) plays an important role. It is constructed over time and, notably, it is carried individually. Taking account of individually held background experience by studying "cultural practice" and then relaying it back to the 'regulatory practice' of the law (Tully, 1995) reveals the diversity of perceptions and makes them empirically accessible. The following elaborates this claim based on the distinction between two sources of appropriateness and their respective 'storage' in the social environment. One source is constituted by the practice of social recognition. It is located outside the "individual human being" in international relations (Gholiagha, 2016) in the context of social groups or communities. In turn, the other source is constituted through cultural validation and therefore carried by the individual human being.

To make cultural validation visible it is necessary to engage in conversations with others. These conversations may emerge as spontaneous objections to norms. Alternatively they may be orchestrated. The more regular access to contestation becomes, the higher the chances of obtaining a sense of appropriateness among involved stakeholders. It follows that while social recognition works through the habitually enacted perception of appropriateness, cultural validation requires the active cognitive engagement with diversity. That is, while norms do travel along with human beings once borders are crossed, normative baggage cannot be expected to match. Taking the change that occurs by moving community boundaries into account is of predominant importance for studies on global governance, especially, in research that touches on the global commons (Ostrom, 1990). It matters in particular for cases where inter-national relations are involved because these always involve the crossing of cultural boundaries. Here it is important to note that the concept of 'boundaries' includes not only the literal step over the border of sovereign political entities, but also the crossing of invisible cultural boundaries when engaging with others without sharing their cultural roots.[23] That is, social recognition emerges through iterated group interaction within a social group or community—i.e. Katzenstein's reference to a "community with a given identity" (Katzenstein, 1996, p. 5).

In this social environment perceptions of appropriateness abound, therefore sustaining the implementation of a legally validated norm based on the socially embedded perception of appropriateness. The literature refers to this interplay between legal and social dimensions of norm implementation as the 'logic of appropriateness' (see Finnemore & Sikkink, 1998; March & Olsen, 1989, 1998; Risse, 2000). The more appropriate a legal norm in the eye of the beholder, the higher the likelihood for its uncontested implementation. This would account for the norms of sustainability and sovereignty which are both categorised as *type 1* norms (Wiener, 2008, p. 64). Notably, however, the shared perception of a norms appropriateness—i.e. a norm's taken-for-grantedness—of these vaguely defined *type 1* norms decreases when zooming in from the macro-structures of order towards the social practices at the micro-layer (Hofius, 2015). In situations where the perception of appropriateness does not overlap among the involved stakeholders, social recognition is not an available resource. While it may be generated through iterated interaction of stakeholders, for example, through regular benevolent encounters, it is important to realise for any research on norms that in the absence of social recognition, opposed interests will be enhanced rather than smoothened by distinct background experiences. As cultural validation kicks in, clashes or norms and cross-purpose talk is expected. This is the likely scenario in most international negotiations. Accordingly, perceptions of norms are more likely to clash than to overlap once borders are crossed. This poses the logical follow-up question of what needs to be accomplished in order to generate shared acceptance of norms?

Rather than reducing conflict about the norms of fisheries governance to the legal arena of courts and the practice of arbitrations, the following sheds light on heretofore un-explored links between the legal core of fisheries regulations and the socio-cultural environment of their implementation. It is held that this change of focus allows for a shift from norm-setting agency at the constituting stage towards the involved stakeholders at the implementing stage. Given the diverse state-plus actorship involved in the contestation including the events that had been constitutive for the larger context of crisis that set the frame for this conflict, it is suggested to reconstruct the normative meanings-in-use that were—if largely implicitly—held by the involved agents. If this argument holds true, then further policy steps identifying measures to sustain the norm of sustainable fisheries, may not have to necessarily include more and better legal measures, but may centre around enhanced stakeholder participation at the referring stage instead (compare Figure 1). The following section 3 applies the conceptual framework to make visible cultural validation in the 'Turbot War' and the process leading up to it (the 'is'), on the one hand, and to make possible stakeholder access to contestation (the 'ought') of norm practice, i.e. the discussions of the normative consequences of the event.

[23] There is much more to be said on the issue of 'cultural diversity' here (compare McIlwain, 1947; Tully, 1995). Detailing this literature would however lead beyond the limits of this article (for more details on the 'thin' approach to 'culture' that underlies the concept of cultural validation, compare Wiener, 2014, p. 47ff).

3. Case Study

3.1. The Dispute in Context

The 'Turbot War' took place off the Canadian North Atlantic coast from 9 March to 16 April 1995, involving as main contestants Canada and Spain (Galicia). In addition, Portugal, the UK, Ireland, Iceland and the EU have been party to the dispute at various stages. The reconstruction of the dispute's narrative includes incidents leading up to the dispute, incidents at the height and the end of the dispute. Events leading up to the 'Turbot War' involved, in the 1990s, "the collapse of the Grand Bank cod fisheries", which brought a serious reduction of Greenland Halibut stock, which is also called Greenland turbot.[24] To counter the imminent fish-stock extinction the Canadian Government decided to implement a zero quota for Atlantic cod fisheries of Nova Scotia. Accordingly, it was prohibited to fish for cod[25] within the 200 NM EEZ[26] off the Canadian Atlantic coast. This resulted in significant job losses in the Canadian Atlantic fisheries, leaving 40,000 unemployed (Springer, 1997, p. 48). The decision caused wide protests by Canadians. First, societal protest revealed the contention of the quota as a threat to the livelihood of the Canadian fishing. Second, high-level political protest against the fishing the grounds right beyond the EEZ where the fish was breeding involved contestations on behalf of the Ministry of Fishery and Oceans within the context of international organisations.[27] Effectively, these contestations erupted into a full-blown conflict including the use of guns vis-à-vis the Spaniards.

The incident that ultimately triggered what was later dubbed the 'Turbot War' was the moment when "Canadian authorities boarded and seized the Spanish trawler *Estai* about 220 miles [sic] east of Newfoundland for violating Canadian fisheries regulations." As observers noted, "[i]n an unprecedented show of force, Canadian ships fired across her bow, before boarding and towing the trawler to Newfoundland" (Bigney & Wilner, 2008, p. 6). That is, the involved Canadians made use of machine guns and water cannons (see Schäfer, 1995, p. 437). The *Estai* was then seized, their fishing gear was cut off and the vessel was then taken to the UN headquarters in New York. The incident was considered a "flagrant violation of the laws of the high seas" by the European Union (EU) considering the seizure of a ship flying the flag of an EU member state (Nickerson, 1995, p. 14, cited in Springer, 1997, p. 26).[28] "…and Spanish ships were soon dispatched to protect other Spanish fishermen [sic]" (Springer, 1997, p. 26). Given its location 20NM beyond the 200NM EEZ the Galician trawler was in international waters and hence formally not in breach with international law. Clearly defined regulatory norms (*type 3*) setting standards for fisheries governance were available based on common global and regional regulatory frameworks, most importantly the umbrella treaties of the United Nations Convention of the Law of the Sea (UNCLOS) which identifies the norms for fishing on the high seas as well as the activities of the various Regional Fisheries Management Organisations (RFMO) such as the North Atlantic Fisheries Organisation (NAFO).[29] According to the purely legal perspective that involved reference to the formal validity of the rule of law (*type 1*) as well as TAC and EEZ (*type 3*), the Canadian reaction appears as a breach of international law. The question that was immediately raised, however, was whether it was also disproportional under the circumstances of the Canadian trajectory of taking acts with a view to responsible fish-stock preservation (*type 1*).

The following recalls documented contestations of central fisheries norms that were at stake, and which were made by way of inter-national interventions. The reconstruction leads beyond the war narrative and demonstrates how the two conflicting parties began at cross-purposes with their inter-national encounters (compare Table 2).

The Canadians emphasised the importance of preventing fish-stock from extinction by making reference to the *sustainability principle* and the principle of a *responsibility to protect fish-stock* in the absence of action by the global community in this regard. In their contestations Canadian stakeholders justified their actions with reference to "grave and imminent threat" and to "an essential interest" in fighting fish-stock extinction on behalf of the Canadians (Beesley & Rowe, 1995, cited in Springer, 1997, p. 44). To them "the issue was conservation, not how the resources is divided" (Springer, 1997, p. 54). And as Brian Tobin Federal Minister of Fishery and Oceans at the time detailed, "[O]ur objective was not to get a bigger slice of the pie. Our objective was to ensure that there would be pie, there would be [a] resource for the future" (Farnsworth, 1995c, p. A2, cited in Springer, 1997, p. 54). The emphasis on the sustainability norm was even supported

[24] For details, see https://en.wikipedia.org/wiki/Greenland_halibut

[25] "By the 1990s, the Newfoundland cod fishery had collapsed, forcing the government to declare a moratorium on all fishing." (Vogt, 2010).

[26] Compare United Nations Law of the Sea (UNCLOS) Articles 56-61, https://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm

[27] Here, Canadian reports stress the importance of Canadian contributions to the UN Straddling Stocks Conference—compare Springer's detailed report of interventions in the early to mid-1990s (Springer, 1997, pp. 55ff).

[28] See Nickerson (1995).

[29] Compare, UNCLOS Art. 116; and for the interrelations among the regulatory bodies, see generally
Northwest Atlantic Fisheries Organization (2015).

Table 2. Inter-national encounters at cross purposes?

Norm Types	Contested Norms	Relevance Canada	Relevance Europe
Type 1	Sustainability	High	Low
	Responsibility to protect fish-stock	High	Low
	Rule of Law	Low	High
Type 2	*Precautionary Principle**	Even	Even
	*TAC***	Even	Even
Type 3	EEC	Low	High
	Mesh-size	High	Low

Notes: *Outcome of dispute settlement in 1995; **Readjusted by dispute settlement in 1995. Source: Author's reconstruction of case material as cited in text.

with reference to the Canadian "responsibility of protecting these fish stocks for the rest of mankind". While Canadians did not wish to claim this responsibility, they adhered to it nonetheless when Clyde Wells pointed out that "absent an effective international agency, Canada…has the *responsibility*…[to act] until such time as the international community is prepared to take responsibility" (MacNeil, 1995, cited in Springer, 1997, p. 54, emphasis added by the author). In other words, *as long as* the global community's regulations were not fit to protect fish-stock from extinction, that obligation fell to the Canadians.[30] As Tobin summarized later, the point was to demonstrate "a first step in instilling in [Canadian] waters and around the world an effective enforcement regime." (Kaye Fulton & Demont , 2003).

By contrast the Europeans stressed the need to re-establish security and in the words of European Union Fisheries Commissioner Emma Bonino "the *rule of law* on the high seas" (Springer, 1997, p. 39, emphasis added by the author).[31] That is, European stakeholders stressed the formal validity of the law as specified by the *type 3* norms, especially the EEZ limit as well as TAC (Springer, 1997, pp. 27, 39). Thereby justifying their action with regard to international law, with Bonino pointing out that "European vessels, operating in full respect of *International Law* and *NAFO regulations*, may not be prevented from fishing" (Springer, 1997, p. 39). In addition, Bonino accused the Canadians of "illegal seizure" of the *Estai* (Bryden, 1995, cited in Springer, 1997, p. 52). Importantly, the European discourse did not stress sustainability, but perseverance of the rule of law on the high seas. As Table 2 shows the international encounters revealed contestations at cross purposes in all but one respect: with regard to *type 1* norms, Canadians valued sustainability, whereas the Europeans stressed the rule of law, with regard to *type 3* norms, Canadians stressed the importance of mesh-size more than the limits of the EEZ, whereas the European stakeholders' contestations revealed reverse preferences. While the total TAC was highly contested especially given the complex trajectory of prior agreements on both sides leading up to the percentage, both parties acknowledged its relevance. And, in the end, it was this norm that carried the weight of the settlement of the conflict on 15 April 1995, where both parties made compromises with regard to the TAC, and the role of NAFO as the regional regulatory body was endorsed.[32]

3.2. What Happened Here?

There have been numerous accounts of the dispute including different descriptions of the involved parties, for example, the *Estai* has been interchangeably identified as Spanish, Galician, European and so on. Academic observers noted that, "[R]easons *given* for such an aggressive action were the past overfishing of turbot and other species by foreign countries, the illegal use of mesh-size of EU nets and the lack of overview of policing overfishing" (Missios & Plourde, 1996, p. 145). Other researchers assigned the comparatively aggressive Canadian behaviour the quality of a morally motivated intervention on behalf of sustainable fisheries (Matthews, 1996). While much of the literature commenting on the dispute at the time discussed the necessity of "enforcement" and the issue of lacking measures under international law.[33] As Springer's excellent documentation and discussion of this debate

[30] For similar rationales, compare the Maastricht judgement of the German Constitutional Court 1993 (BVerfGE 89, 155 of 12 October 1993, *Az*: 2 BvR 2134, 2159/93); as well as the European Court of Justice (ECJ) judgment in the Kadi case 2008 (ECJ, Joined Cases C-402/05P and C-415/05P, Yassin Abdullah Kadi and Al Barakaat International Foundation *v* Council of the European Union and Commission of the European Communities [2008] ECR I-6351).

[31] Next to EU Fisheries Commissioner Bonino, the Spanish Minister of Agriculture, Fisheries and Food Atienza was engaged in the European set of stakeholders (Springer, 1997, p. 51).

[32] For the details see Springer (1997, pp. 36-37) citing Buerkle (1995) and Farnsworth (1995c, p. A2).

[33] Compare Allen L. Springer (1997) for an excellent overview of this literature. Notably, according to the Naval Service Act from 1919 when "most of Canada's maritime activity was conducted by the Canadian Department of Marine and Fisheries, the fourth mandate of the Canadian Navy involves the protection of fisheries" (Bigney & Wilner, 2008, p. 3).

shows, that perspective emphasised legal enforcement procedures. And, for example, a utilitarian analysis of the dispute could argue that two interests stood opposed, concluding that the conflict was solved based on the amounts of money exchanged, and the trawler being returned and TAC quotas agreed for future fisheries.

Given the ongoing interest in the dispute beyond its settlement based on material resources, this article acknowledges the diversity condition of inter-national encounters as an important source for latent contestation. To avoid similar disputes in the future and/or learn from the experience of this dispute, it is therefore worthwhile identifying the sources as places where background experiences are 'stored'. It suggests that by elaborating on the link between the 'is' and 'ought' of normative practice, it is possible to peer beyond this material settlement. While not disputing the formal points raised by that literature, this article's argument suggests that by reconstructing and comparing distinct discourses of norm contestation the dispute's source and outcome may be considered with a different purpose in mind, namely, what are the possibilities of stakeholdership claims with a view to future developments of fisheries governance. What, if both parties' contestations were justified given their respective background experience? Does the dispute reveal access points that allow for improving stakeholder access to contestation? This finding would facilitate a better grasp of the discursive space where organising principles negotiated and therefore contribute to a fairer organisation of global fisheries governance.

The scenario of the dispute was perceived quite differently from the respective Canadian and Spanish perspectives. The Canadians who sought to protect the fish-stock felt their attack of the Spanish trawler, while formally illegal (i.e. fundamental norm of sovereignty, principle of non-intervention), was legitimate both with regard to the sustainability principle (i.e. the fundamental norm of sustainable fisheries) in protection of the global commons, and with regard to their perceived right to protect their livelihood. As a result, distinct background experience and expectations lead to a clash of norms.[34] The situation demonstrates the potential for cross-purposes of formal validation on the one hand, and cultural validation, on the other, quite well. The result consists in two perceptions of legitimate behaviour based on distinct validity claims: while the Canadian moratorium intended to preserve one type of fish stock (cod), the fact that other fish (turbot), which was caught by using means that were in breach with their specific mesh-size regulations, demonstrates the at times significant contradiction between perceived validity and perceived appropriateness differs among stakeholders in inter-national encounters. This difference in perception matters because it informs the way the existing normative structure is re-enacted by the parties of the dispute. The at times quite contradictory interpretation of that structure and the resulting deviation in compliance with norms is the likely cause for conflict in all situations that are not regulated by a single legal order, but by a range of overlapping legal regimes that work beyond the state and within distinct social environments at that. Given that this situation is the rule rather than the exception in global governance, it is important to understand how the diversity of experience and expectation of the involved stakeholders plays out.

The point here is to demonstrate how different segments in the cycle of contestation come into play. While the regulations set by the Canadian authorities were reasonable with reference to the fundamental norm (*type 1* norm) of sustainable fisheries, aiming to sustain the recovery of fish-stock and thereby the livelihood of the fishing folks in the long run, the zero quota was a regulation (*type 3* norm), which had a dramatic and immediate effect first of all on the Canadians. It was the Canadian efforts and subsequent grudge vis-à-vis the European stakeholders that encountered an enforcement problem. In turn, Galician's considered their conduct with regard to the fishing of turbot as legal because their access to turbot was consistent with international law and supported by EU policy. After all, they were fishing outside the EEZ and therefore in international waters where no legally enforceable mesh-size regulations for turbot were in place at the time (see MacDonald, 2002). In addition, Galicia's position vis-à-vis the Spanish state has often been considered as special insofar the Galician commitment to comply with agreements between Spain and the EU has traditionally been limited. Spain's membership in NAFO only lasted three years from 1983–86, when Spain "together with Portugal, acceded to the EEC in 1987 and ceased membership in NAFO (subsequently being represented by the EEC)"[35]. The objective of NAFO, as stated in the Convention[36], is "to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fishery resources of the Convention Area. The Convention applies to all fishery resources in the Convention Area except salmon, tunas

[34] According to Matthews the Canadian action was justified with reference ''to moral rather than legal terms'' (Matthews, 1996, p. 505).

[35] See Convention on Future Multilateral Cooperation in Northwest Atlantic Fisheries Organization (NAFO, 2016a).

[36] The Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, signed on 24 October 1978 in Ottawa, came into force on 1 January 1979 following the deposit with the Government of Canada the instruments of ratification, acceptance and approval by seven signatories: Canada, Cuba, the European Economic Community (EEC), German Democratic Republic (GDR), Iceland, Norway, and the Union of Soviet Socialist Republics (USSR) (NAFO, 2016a).

and marlins, cetaceans managed by the International Whaling Commission, and sedentary species (e.g. shellfish)." (NAFO, 2016a). This was, however, contested by the Canadians who insisted on a stronger regulative power of NAFO regulations that established a larger mesh-size than the *Estai* used. As Tobin claimed in the Canadian House of Commons: "The net had a 115 mm mesh, which is smaller than the 130 mm required by NAFO. In addition, the net in question had an 80 mm liner in the net" (Commons Debates, 15 March 1995, p. 10511, cited in Matthews, 1996, p. 514). According to Tobin's view, the *Estai*'s fishing practice was in breach with the regulations set by NAFO.

3.3. Formal vs. Perceived Validity

The incident achieved significant public and media attention due to the range of Canadian stakeholders participating in the activities (i.e. including fishing folk, the navy, coastguards and government representatives at various layers of social order). All were claiming legitimate stakeholdership in the narrative of the 'Turbot War'. Given this background, the point of the quasi-martial engagement was not a question of right or wrong that could be addressed with exclusive reference to the formal validity of a norm (i.e. the wording in the legal document). Instead, the conflict evolved around the perceived validity of a norm (i.e. the perception of appropriateness). While the Canadians referred to the latter, the Europeans referred to the former (see Table 2). In addition, Canadian background experience entailed the stored experience with the drastic zero-quota decision regarding Canadian cod fisheries. Accordingly, a shared if invisible link between *cod* and *turbot* fisheries existed that was cast forward from the experience with Canadian fisheries policies in the 1990s (i.e. the zero quota policy on Atlantic cod fishing which left a large part of the Atlantic fisheries population out of work, and which triggered contestations about fisheries norms among domestic stakeholders in Canada) towards the international conflict that triggered the 1995 Turbot War (i.e. the conflict about turbot over-fishing which created contestations among international stakeholders including Canadians and Europeans).

The reconstruction of the dispute over what the European stakeholders presented as straightforward legal situation according to international law, revealed that for Canadian stakeholders past experience with one type of fish and the threat of extinction (i.e. cod) had created an environment in which fisheries stakeholders felt that overfishing was not appropriate. According to this perceived threat, the action not only appeared just. It was also justified based on proportionality with reference to the fundamental responsibility to protect fish-stock from extinction.[37] This meant endorsing the fundamental norm of sustainability at a high degree of appropriateness. That is, the diverse domestic range of Canadian stakeholders shared the social recognition that their values were betrayed by the legal contestations of the Europeans, notwithstanding that the latter were catching another type of fish at the time (i.e. turbot), and that this activity was not in breach of the law. Approached from this long-term reconstructive perspective that connects events from the past with present day contestations, the dispute was presented as triggered by a *perceived* breach on with the *type 1* norm of sustainability on behalf of the Europeans. To enforce the point, the Canadians made additional if highly contested reference to the European breach with the Canadian recommended mesh-size standard (*type 3*). The latter was widely publicised with the help of media effective advocacy.

3.4. What Is There to Learn from This Incident?

While the case of the various 'wars' in the sector of global fisheries governance may seem *folkloric* to non-fishing folks, these encounters shed light on the interplay of different cultural roots of the validity claims that came to the fore by the contestations. In fact, distinct cultural experiences are likely to suggest a different expectations and hence diverging interpretations of norms that are formally valid. As a site of international encounter the 'Turbot War' offers substantive insight into the way norms play out in global governance. It begins from the simple question: if you were to assume—for a moment—that you were aboard a fishing vessel pursuing fish-stock on the high seas (i.e. under the jurisdiction of international law) and noticed that another vessel was engaged an activity that you perceived as 'not legitimate' (i.e. unfair, inappropriate, or otherwise improper), what would your reaction be to settle the contested issue? Would you contact a third party such as for example the most trusting political or legal representative in whichever country closest by VHF (Very High Frequency) or other means of communication? Or would you, given the location of your vessel and the urgency of the situation, choose to engage directly with the other vessel? The Canadians' decision resonates with a shift from contestation (i.e. objection to norms, and in this case, fisheries norms set on behalf of the Canadian state-plus fisheries stakeholdership) to conflict (i.e. confronting the Spanish trawler with acts of violence that were in breach of the law). As this article's main argument holds, such shifts from contestation to conflict may be prevented based on regular access to contestation for all involved stakeholders, while the narrative of the dispute has

[37] Compare Beesley and Rove (1995, cited in Springer, 1997, p. 49).

been 'of war', this article's unpacking of the narrative into inter-national encounters suggests that the concept of 'dispute' involving a series of contestations is more helpful.

It is important to note that while the sector of fisheries governance forms part of UNCOLS and as the most advanced framework of international legal norms and as such reflects a high degree of formal validity, fisheries norms involve a high degree of latent contestation. This is due to the dual dynamics of movement in the fisheries sector: on the one hand, fishing vessels regularly cross territorial boundaries, on the other hand and relatedly, many types of fish-stock naturally move beyond such formally defined limits. It results that "[D]espite the changes in ocean law made by the 1982 United Nations Convention on the Law of the Sea and the evolving customary state practice that undergirds it, there remains substantial concern about the fate of fish stocks that straddle zones of national control or cross between national zones and the high seas" (Springer, 1997, p. 32). It follows that further agreements about "measures for the conservation" of fish are required (see UNCLOS, 1982, 1283, cited in Springer, 1997, p. 32).

As a rule, "treaty language" is kept relatively vague in order for treaties, conventions, agreements and other formal documents to be signed.[38] In turn, the rules and standardized procedures to implement treaties are much more specific. Accordingly, *type 1* norms are kept relatively vague in international agreements so that despite their formal validity they leave some margin to interpretation. This makes it possible for a diverse group of signatories to agree following a series of negotiations and consultations.[39] The same accounts for Regional Fisheries Management Organisations that also remain "a matter of contention" (Springer, 1997, p. 38), therefore leaving margin for stakeholder engagement with a view to specifying the norms they consider essential. As studies of global environmental governance have shown, these legalised procedures seldom offer sufficiently sound reference to convince all involved stakeholders. Especially, cases where the global commons are involved, such as in the sector of environmental, climate, oceans or fisheries governance, a gap between *type 1* and *type 3* norms, and which can be located at the meso-layer of social order in global governance, remains. Therefore, the meso-layer delineates the space where discursive interaction among stakeholders is most likely to take place. It is defined as the space for critical intervention in global governance, and stands to be carved out by exploring the 'ought' question of what is possible.[40] As this article's reconstructive analysis of the 'Turbot War' reveals, this meso-layer facilitates the space where norms such as the precautionary principle or even novel agreements about ways of distributing total allowable catch (TAC) emerge. These norms are defined as *type 2* norms, which are generated through politics and policy-making, play an important role in the process of generating legitimacy. Following the disaggregation of the narrative and the reconstruction of the contingent contestations of the involved stakeholders the 'war' narrative is more fittingly replaced by a core contestation of fisheries governance. For similar contestations in other sectors consider, for example the principle of common but differentiated responsibility (CBDR) in global climate governance.

In practice, this definition of fundamental norms creates an onus for continuous interpretative assessment on a case-by-case basis; and it is also a cause for many political contestations.[41] In the process additional rules and regulations are developed. As standardised procedures these *type 3* norms are much more specific and as a rule to not leave much margin for speculation, interpretation or contestation. The question is, who has the legitimate right to access in this process? As the following section argues, from a normative perspective that envisages the highest potential of legitimacy, norm ownership is key to this process. Following the reconstruction of the central contestatory practices and reference to norms on behalf of the involved stakeholders, the final evaluative section turns central attention to the second theoretical step, namely, establishing the theoretical link between the 'is' and the 'ought' of global governance. To that end the question of how access to negotiating *type 2* norms could help filling the legitimacy gap in global governance is addressed.

4. Evaluation

Taking into account the three distinct practices of normative evaluation two sources of the dispute's escalation matter in addition to formal validation. The *first source* is the *social environment* that matters for the implementation of a norm; the *second source* is the *background experience* of individual day-to-day practice. As noted above, while both are constituted through interaction in context, as compliance and regime analyses have demonstrated in detail, conceptu-

[38] See the seminal article by the Chayeses for details (Chayes & Chayes, 1993).

[39] Compare, for example, the general agreement of international agreements such as the United Nations Fishstock Agreement (UNFSA) of 1995 which despite enjoying widespread "acceptance of UNFSK…is not universal" (Asmundsson, 2014, pp. 2-4).

[40] For more detailed elaboration of the concept of critical intervention with reference to the politics of recognition see Tully (2008, 2014).

[41] See Chayes and Chayes (1995), Koh (1997), as well as Asmundsson (2014, p. 2)

ally the space where they are stored differs: one is group based, the other individually carried. The distinct storage space matters especially when inter-national encounters are at stake.

Following the reconstruction of contestations based on the arenas in which all involved stakeholders operated, the three dimensions of normative practice come to the fore, i.e. legal validity, social recognition and cultural validation (compare Figure 1). First, domestic Canadian stakeholders (including fishing folk, ministry, press, lawyers, politicians, navy, coastguard and so on) engaged in contestation of the 0% quota for cod (in the early 1990s), and generally, the Grand Bank fisheries problems, e.g. the tail-and-nose issue, and the role of regional organisations and international law. They demonstrate an emphasis on the perceived validity of fisheries norms. Second, regional European stakeholders have focused on the regulatory norms of EEZ limitation, TAC, and quotas. Their reference to the formal validity of these *type 3* norms clashed with the Canadian emphasis on the perceived validity of the sustainability norm. It follows that European justifications were based on formal validity, prioritizing the language set within signed agreements under international law. At the same time, however, this justification was informed by the individual background experience of the Galician fishing folk losing out on European quotas as a result of Spanish EU accession in 1986. The third contestation comprises inter-national encounters of stakeholders including stakeholders in the domestic Canadian context, and their interaction with the Galician fishing folks, the Spanish and EU representatives as well as other international stakeholders such as especially the British (who intervened in support of the Canadians) or the Portuguese who supported the Spanish.

The conflict emerged from the contradicting relevance that was attached to the respective contested norms in order to justify stakeholder behaviour. A *structural norms analysis* would hold that these justifications reflect a conversation at cross-purposes. The central norm guiding the behaviour of the Canadian set of stakeholders was the sustainability norm; in turn, the guiding norms for the European set of stakeholders (except the British) were the EEZ and the TAC. By contrast an *inter-relational perspective on norms* would expect contestation to harbour (re-)constitutive effects. That is, through the practice of norm contestation along the three dimensions of norms, the meanings of norms change. This is key for the aim of filling the legitimacy gap at the meso-layer of global governance. And, as noticed with regard to the core contestations of the dispute, norms such as organising principles had no visible impact on triggering the dispute. They were, however, central to its settlement. The question that follows from the insights generated by the reconstruction of the contestations, is whether more regular encounters between involved stakeholders could make a difference in future conflicts. The following elaborates on this question with a focus on the *type 2* norm of access to contestation.

4.1. Access to Contestation

The success of enhancing stakeholder access to contestation depends on whether and how access to regular contestation is established—in principle—for all stakeholders. Does a right to access exist, and is it feasible? To probe this, contestation stands to be mapped as a social practice, and shaped as an activity that is—in principle—norm generative. The two-tiered research design that is typical and conditional for successful bifocal research operationalisation is spelled out by Figure 1, which represents the empirical dimension, and by Table 3, which represents the normative dimension.[42] As the cycle of contestation indicates by the arrows, contestation can be carried in different ways: as social practice, it is contingent. Its effect therefore depends on *who* is involved and *where* contestation takes place. Any agent who is able to access and capable to mobilize all positions on the cycle has a comparative advantage to others who do not. The cycle allows for a number of evaluative steps in order to identify the expected degree of contestation. It enables researchers to understand and explain the contestatory behaviour with reference to normative indicators. Based on this evaluation it is possible to identify first, the involved agents and the stage of norm implementation they encounter themselves with regard to a specific given norm, and secondly, the likelihood of norm acceptance. Both allow for the third step of developing potential solutions in cases where contestatory practices are likely to spark considerable political conflict.

The cyclical model presented by Figure 1 entails three ideal typical situations that indicate whether the potential for contestation is expected to be high or low. These situations include the formal validity, social recognition and cultural validation of a norm. The cycle of contestation assigns three distinct stages of norm implementation (such as constituting, referring and implementing) to three types of agents (such as masters, owners and users). The normative move builds on the second hypothesis, which reads as follows. The positions on the cycle are not fixed. The cycle metaphor allows for an imaginary 'spinning the wheel' to change the 'sites' where the normative structure of meaning-in-use is (re-)enacted. By changing the site, the agency, it is possible to envisage changes with regard to the

[42] Note that, while in current research that draws on these findings, the author addresses the overlay of both, the limited framework of this article do not allow further detailed elaborations of this normative document. Therefore, it should suffice to summarise the central points of this argument here instead (see: Wiener, 2016a, 2016b).

stage of norm implementation (x-axis), on the one hand, and the segment on the cycle of contestation (y-axis), on the other. According to the (re-)enacting the normative structure of meaning-in-use through formal validation is most likely to take place within a context that is qualified by formal institutions such as, for example, committees of international organisations, treaty negotiations and so on that involve encounters between government representatives and/or diplomats. The result of formal validation is most likely to be a treaty or any type of formal agreement. At this stage, negotiations will most likely focus on fundamental norms including a relatively broad, albeit little specified, moral and ethical reach.

By contrast, (re-)enacting through social recognition is expected to occur in the context of well-established social groups. In this context informal institutions such as habits and routinized practices qualify the interrelation between individuals. These may include all sorts of entities that have been constituted as stable groups through social interaction. The result of social recognition is most likely to be expressed through habitual norm-following behaviour. The degree of contestation is low because group members have been socialised into accepting the normalcy of the norm. Cultural validation, in turn, sheds light on (re-)enacting as an interaction among individuals that are likely to encounter each other as strangers with different individual background experience. In inter-national relations—understood as encounters among agents with distinct national roots—this distinct normative baggage is therefore brought to bear across political borders or socio-cultural boundaries. At this cycle position the institutional context is the most flexible among the three possible ideal types. Why and how does this matter with regard to the answering the research question with regard to the legitimating impact of contestation?

4.2. Stakeholders Are No Normative 'Dupes'

If norm implementation is understood as the interactive process of (re-)enacting normative meaning in use, it follows that norm implementation is not carried out by normative "dupes".[43] Instead, it is activated by agency that is capable of norm generation through the respective practices employed at the three stages. The first type of involved actors in this process is defined as the masters: For the masters of a treaty demonstrate the legitimacy of the treaty's content with their signature. The second type of actor is defined by the concept of owners. They are the stakeholders who refer to mid-range organising principles in their day-to-day negotiation of the ground rules of specific norms relevant to a global governance sector. The third type consists of the norm users who are expected to implement the norm on the ground as the designated norm followers. The research question that follows is: under which conditions do the involved actors obtain agency that enables them to develop ownership?

As Table 3 indicates, the potential for norm ownership is highest at the meso-layer in Quadrant B. By turning to the information provided by the empirical research underlying Figure 1, it emerges that norm-ownership at the meso-layer is unlikely to evolve without specific strategic innovations such as enhancing conditions for access to contestation. Given these three ideal typical situations, it is obvious that an overlap of mastership, ownership and followership of a norm will generate the highest compliance rates. Yet, in global governance settings, the occurrence of such overlap cannot be taken as a given. As frequent debates of and breach with the norms of international

[43] Compare Michael Barnett's reference to the absence of culture in international relations (Barnett, 1999).

Table 3. The normative model.

Y = Layers of Social Order **X = Implementation**	**Constituting/ Masters**	**Referring/ Owners**	**Implementing/ Followers**	**Moral Reach**
Macro *(norm type 1)*	*Quadrant A:* Expected Contestation: **Low**			Broad
Meso *(norm type 2)*		*Quadrant B:* Expected Contestation: **Medium**		Medium
Micro *(norm type 3)*			*Quadrant C:* Expected Contestation: **High**	Narrow

Source: Adaptation from Wiener, Hansen-Magnusson and Vetterlein (2014).

law have demonstrated, contested compliance is more likely than the reverse situation. Analysts and policy makers therefore need to design models that facilitate the best possible overlap between experience and expectation regarding the normativity of a norm among the highest number of stakeholders in order to generate the best possible outcome. The metaphor of the cycle of contestation demonstrates the difficulty in obtaining an optimal match between the positions on the cycle of contestation and the location in the global governance setting that allows for the development of norm ownership, on the other.

This is documented by the normative approach, which demonstrates that the optimal site for stakeholders to negotiate normativity (i.e. the ground rules of sectoral governance) is located at the meso-layer of social order (Table 3). Notably, the metaphor of cyclical contestation indicates the agent's placement on one of three stages of norm implementation (x-axis) on the one hand, and, as enabled or constrained by the contingency of the cycle position, on the other. Both are socially constituted and reflected at three layers of social order. At each of these layers normativity different actors have access to contesting normativity (see y-axis). The cyclical involvement in contestation works as an indicator of the legitimacy gap in global governance. By disaggregating the sources of stakeholder empowerment into three practices of norm evaluation, it becomes possible to identify whether one, two or all three dimensions of norm evaluation are accessible for stakeholders. Thus, it is both possible to name the normative deficit and to develop means to counter it. In this regard, access to stakeholder contestation plays a central role for further research on inter-national encounters and contested norms.

5. Conclusion

While the conflictive inter-national encounter between state-plus actors culminated in 1995, the reconstruction of the events includes the duration of the Canadian Atlantic fisheries' "crisis" which had been going on for more than half a decade prior to that.[44] The article unpacked the narrative of 'war' and sought to demonstrate how background experience of diverse sets of stakeholders from distinct root communities came into play with regard to the development of the dispute. To that end, it carried out a reconstruction of the dispute thereby offering a fresh perspective on the much-discussed problem of the global commons as a space where diverse stakeholders use limited resources, and interests prevail. Given that this space is regulated and structured by a normative grid that undergirds all practices, it was argued that reconstructing the practices applied by the Canadian and the European stakeholders, would allow for novel insights about contested normative meanings (the 'is' dimension) and, following from that, suggestions for paths towards filling the legitimacy gap (the 'ought' dimension). The article's critical approach involved addressing the link between the 'is' and the 'ought' of norms. This was done by addressing the two-fold challenge of making diverse meanings visible, and by thinking about how to make diverse stakeholder input possible.

To that end, the article suggested linking the cycle of contestation as an explanatory model of contestatory practices with the normative model of the legitimacy gap. It argued that new insights about conflict and legitimacy stand to be gleaned from empirical reconstructions of instances in which norms are contested within a specific sector of global governance such as for example fisheries governance. As a site of international encounter in fisheries governance the dispute allowed for an illustration of the link between the 'is' and 'ought' of norms research. The Spaniard's legal yet, in the eyes of the Canadians illegitimate fishing practices of deep-sea fishing which—albeit not in breach with international law—stood in direct contrast with Canadian fishing practices. The Canadians claimed their contestation of the Spanish practice was legitimate both with reference to the fundamental norm of sustainable fisheries (*type 1*) which they expected the Spaniards to follow, and with reference to their experience with the zero quota regulation (*type 3*) that threatened their livelihood and which was enhanced by the Spaniards' fishing right beyond the EEZ. In this case a settlement at the meso-layer followed extensive contestations at various layers as noted in section 3. The distinct normative dimensions on the cycle of contestation shed light on the space at the meso-layer of social order where former cross-purpose action might, in the future, be channelled into common-purpose negotiations. By respecting the right of access to contestation for involved stakeholders the complex process of TAC negotiations including state-plus agency guided by the precautionary principle could lead the way towards fairer fisheries governance.[45]

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[44] Compare e.g. Bigney and Wilner's article (2008).

[45] The success of such common negotiations has for example been demonstrated by collaboration of regional or sub-state fisheries councils regarding halibut quotas in the Baltic Sea as well as with cod fisheries in Norway and Russia.

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The author declares no conflict of interests.

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