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Overlapping spheres of authority and interface conflicts in the global order: Introducing a DFG research group

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Introducing a DFG Research Group

Discussion Paper

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Abstract

OVERLAPPING SPHERES OF AUTHORITY AND INTERFACE CONFLICTS IN THE GLOBAL ORDER

Introducing a DFG research group

By Michael Zürn, Benjamin Faude, and Christian Kreuder-Sonnen

The DFG research group, “Overlapping Spheres of Authority and Interface Conflicts in the Global Order” (OSAIC), focuses on the rise of interface conflicts within and across overlapping spheres of authority. The increased institutional production of norms in the international realm leads to both horizontal interface conflicts at the same level of governance (e.g. across two or more international spheres of authority) and vertical interface conflicts across spheres of authority on different levels (e.g. international and national spheres of authority). Under which conditions become such conflicts manifest? What are the responses to conflicting rules originating from overlapping spheres of authority? To what extent are these responses guided by normative principles? If responses are justified with reference to normative principles, what are these principles and how are they operationalized concretely? What consequences do the different ways of responding to interface conflicts have for the global order as a whole? With these questions, the research group moves beyond the study of issue-area specific international institutions or organizations, and targets the question of the international order understood as a system of overlapping and interacting spheres of authority. In order to answer these questions, the research group proceeds in four steps. First, we utilize different methods for identifying such conflicts in order get a better understanding of the extent and content of interface conflicts. Second, we develop an empirically validated typology capable of grasping systematically the variety of responses to interface conflicts. Third, we use this typology as a basis for explaining variance in the responses to interface conflicts and for analyzing the consequences of different responses for the global political order. Fourth, we seek to reconstruct existing normative practices and develop standards for their evaluation.

Keywords: overlapping spheres of authority, interface conflicts, global order, multi-level governance, international institutions

Zusammenfassung

ÜBERLAPPENDE AUTORITÄTSSPHÄREN UND SCHNITTSTELLENKONFLIKTE IN DER GLOBALEN ORDNUNG

Vorstellung einer DFG Forschungsgruppe

Von Michael Zürn, Benjamin Faude und Christian Kreuder-Sonnen

Die DFG Forschungsgruppe „Overlapping Spheres of Authority and Interface Conflicts in the Global Order“ (OSAIC) untersucht immer häufiger auftretende Schnittstellenkonflikte innerhalb sowie zwischen überlappenden Autoritätssphären. Die angestiegene institutionelle Erzeugung von Normen in der internationalen Politik führt zum einen zu horizontalen Schnittstellenkonflikten auf dem gleichen Governance-Level (z.B. zwischen zwei oder mehreren internationalen Autoritätssphären) und zum anderen zu vertikalen Schnittstellenkonflikten zwischen Autoritätssphären auf unterschiedlichen Levels (z.B. internationale und nationale Autoritätssphären). Unter welchen Bedingungen manifestieren sich solche Konflikte? Was sind die Antworten auf sich widersprechende Regeln, die aus den sich überlappenden Autoritätssphären hervorgehen? Inwiefern sind diese Antworten von normativen Prinzipien geleitet? Falls Antworten mit Verweis auf normative Prinzipien gerechtfertigt werden, um welche Prinzipien handelt es sich dabei genau und wie lassen sie sich konkret operationalisieren? Welche Konsequenzen haben die unterschiedlichen Antworten auf Schnittstellenkonflikte für die globale Ordnung insgesamt? Durch diese Fragestellungen beschäftigt sich die Forschungsgruppe mit mehr als nur der politikfeldspezifischen Analyse internationaler Institutionen oder Organisationen. Sie zielt vielmehr auf ein Verständnis der internationalen Ordnung als System von sich überlappenden und interagierenden Autoritätsfeldern ab. Um die Fragen beantworten zu können, geht die Forschungsgruppe in vier Schritten vor. Zuerst nutzen wir verschiedene Methoden, um Konflikte dieser Art identifizieren zu können und um somit ein besseres Verständnis für das Ausmaß und den Inhalt von Schnittstellenkonflikten zu entwickeln. Im zweiten Schritt entwickeln wir eine empirisch valide Typologie, die in der Lage ist, systematisch die Vielzahl von Antworten auf diese Konflikte zu erfassen. Im dritten Schritt nutzen wir diese Typologie als Ausgangspunkt, um die Varianz der Antworten auf Schnittstellenkonflikte zu erklären und um die Konsequenzen der verschiedenen Antworten für die globale politische Ordnung zu analysieren. Zuletzt ist es unser Ziel, existierende normative Praktiken zu rekonstruieren und Standards für ihre Evaluierung zu entwickeln.

Schlüsselwörter: überlappende Autoritätssphären, Schnittstellenkonflikte, globale Ordnung, Multi-Level Governance, internationale Institutionen

I. INTRODUCTION¹

Institutional density has increased in the international realm.² Traditionally, public authority – defined as the recognized competence to make binding decisions and valid interpretations to which actors are expected to defer – was exercised primarily within the nation state. However, increasing interdependence among national societies has led to the proliferation of sector-specific trans- and international institutions. In many cases, nation states pool resources in or delegate decision-making competences to these institutions (Hooghe et al. 2017; Zürn 2015). The fact that institutional proliferation has led to greater institutional density at the international level is reflected in the increase in the number of multilateral treaties from 1,634 in 1988 to 2,403 in 2012 (Yearbook of International Organizations 2013). Furthermore, the number of International Governmental Organizations (IGOs) has reached 265 (Yearbook of International Organizations 2013, 25). Likewise, the number of transnational institutions has grown rapidly since the beginning of the 1990s. In this case, the competence to make globally binding decisions and valid interpretations is taken over by private bodies, such as the International Chamber of Commerce (ICC) and the International Accounting Standards Board (IASB) (Büthe and Mattli 2011).

As a result of the proliferation of governance institutions beyond the nation state, the sites of public authority have multiplied and the borders between them have become more diffuse (Walker 2002). International authority is usually limited to a particular issue area or field of expertise.³ However, it is exercised neither in isolation from other sites of international authority nor independently of nation states. It coexists and intersects with authority exercised by private bodies. In that way, political and epistemic authority is exercised within a multitude of “spheres of authority” (Rosenau 1997) that are only loosely coupled with each other (Zürn 2017). Hence, the growing institutional density exponentially increases the likelihood of overlaps and incompatibilities between norms and rules associated with different authorities – both horizontally, that is, between two international norms, and vertically, that is, between an international and a national (or regional) one.

¹ This paper outlines the research program of an interdisciplinary research group of the German Research Association (DFG). We thank the DFG for funding the project and all the participants in this research collaboration for their contributions to the research program. We would also like to acknowledge the excellent research assistance provided by Felicitas Fritzsche.

² See Raustiala (2013) for a recent summary, and Young (1996) for an early observation of this phenomenon.

³ See, e.g., Bogdandy & Schill (2011); Lenz et al. (2015); Rosenau (1997); Rosenau (2007).

Growing institutional density may lead to conflicts between state and/or non-state actors who justify opposing positions by reference to different norms or rules. Take the example of the transatlantic dispute over genetically modified organisms (GMOs) in which the United States invoked international trade rules enshrined in the World Trade Organization (WTO) to assert the admission of GMOs in European markets, whereas the European Union (EU) invoked environmental as well as health-and-safety regulations enshrined in the Biosafety Protocol to justify the ban of GMO products (Pollack and Shaffer 2009). Or take the example of fundamental rights protection in the United Nations Security Council's (UNSC) regime of targeted sanctions against terror suspects: The permanent members of the UNSC argued that the Council was not bound to respect due process rights of the targeted individuals, because the United Nations (UN) Charter endowed it with overriding discretion when countering threats to international peace and security. By contrast, several non-governmental organizations (NGOs), the UN's entire human rights branch, and especially the European Court of Justice (ECJ), held that the UNSC had to respect at least a minimum of due process rights by invoking international and European human rights law (Krisch 2010, ch. 5; Heupel 2013; Kreuder-Sonnen forthcoming, ch. 4).

We call such norm collisions 'interface conflicts', defined as incompatible positional differences between actors about the validity or scope of international norms or rules in relation to other norms and rules within or beyond the nation state. In these interface conflicts, different positions are justified with reference to different norms and rules of which at least one is associated with an international authority. Our notion of conflicts thus refers to actors' different preferences over outcomes that cannot be achieved simultaneously.⁴ The likelihood of such conflicts increases with institutional density. Since there is no global legislature or a global court of appeal that could adjudicate between those positional differences, the decisive question is if and how interface conflicts are 'managed' or 'regulated'. Our analytical perspective differs from others' because it deduces the growing number of interface conflicts not from the decomposition of a formerly unified body of (legal) norms, but from the emergence and expansion of international authority. By focussing on interface conflicts, we seek to make a contribution to

⁴ This approach towards conceptualizing conflicts focusses on the incompatibility of goals with respect to material or immaterial goods as its distinctive criterion (see Rittberger & Zürn 1990, 14). It may be labelled a sociological approach since it builds on Lewis Coser's (1964) and Ralf Dahrendorf's (1961) foundation of a sociology of conflicts according to which they are productive and desirable for all kind of societies. In this perspective, it is only the way in which actors handle conflicts – for instance, via war – that may be called dysfunctional, but not the conflict itself. Norms and institutions are mechanisms to handle conflicts productively.

research on the implications of institutional proliferation conducted by international lawyers and international relations (IR) scholars alike.

Several strands of the IR and international law literature take the increased institutional density at the international level as their analytical point of departure and investigate its implications. However, international lawyers concentrate on structural questions and normative implications of emerging (dis)order in a fragmented institutional setting, while IR scholars focus on the strategic behaviour of actors within areas of institutional overlap. Within this division of labour, the legal debate centres on the notions of the 'fragmentation of international law', 'global legal pluralism', 'constitutional pluralism' and 'global constitutionalism'. The IR discussion, on the other hand, first and foremost targets the analysis of 'cross-institutional choices' by state actors, which includes 'forum shopping', 'regime shifting', and 'competitive regime creation'; secondly, it focusses on the emergence of regime complexes in various issue areas as a result of states' institutional choices.⁵

The concept of 'fragmentation' of international law has been tied to the notion that institutional proliferation undermines the unity of the international legal system (Benvenisti & Downs 2007; Fischer-Lescano & Teubner 2004; ILC 2006). It thus stirred normative discussions about the desirability of, and remedies to, the resulting pluralist structures (see Peters 2017 for a recent overview). Fragmentation refers to both the uncoordinated processes and the results of the expansion and diversification of international law and international courts and tribunals (ILC 2006). Against this backdrop, Fischer-Lescano and Teubner (2004) identify four kinds of problems: contradictions between individual decisions of international courts and tribunals, rule collisions, inconsistencies between legal doctrines, and conflicts between legal principles. Four different conceptual responses to this predicament are suggested. *Global constitutionalists* aspire to a hierarchically structured legal system with an institutionalized final authority imposing a set of superior substantive norms (Fassbender 1998; Habermas 2008). *Constitutional pluralists* advocate decentralized coordination on the basis of principles reflecting fundamental constitutional values of human rights, democracy, and the rule of law (Kumm 2009; Stone Sweet 2013; Walker 2002). *Global legal pluralists* finally embrace fragmentation as desirable and favour a system of heterarchical interaction of legal regimes (Fischer-Lescano & Teubner 2004; Berman 2007; Krisch 2010).

⁵ A third strand of IR research analyzes dyadic interactions between international institutions, see Gehring & Oberthür (2009); Oberthür & Stokke (2011).

All of these contributions focus on the implications of legal fragmentation on the normative macro-structure of the international legal system as a whole without paying much theoretical and empirical attention to what happens on the micro-level, that is, at the interface of the fragments. As a result, we lack answers to two pressing questions: (When) does institutional density result in interpretive or regulatory conflicts between judicial or political actors? And how, if at all, are colliding sets of norms and rules accommodated?

Studies in IR revolve around the notions of 'regime complexity' and 'regime complexes'. Regime complexes are defined as sets of non-hierarchical institutions with partially overlapping jurisdictions that govern a particular issue area or subject matter (Raustiala & Victor 2004; Alter & Meunier 2009; Orsini et al. 2013). A regime complex, therefore, ranks on a lower level of societal organization than international lawyers' encompassing notion of the fragmentation of international law. IR scholars have developed analytical concepts to capture the different possibilities for states and non-state actors alike to engage in cross-institutional strategizing to further their goals in regime complexes (see Faude and Gehring 2017 for a recent overview). Rule addressees may engage in forum shopping across overlapping international institutions to circumvent costly obligations or foster favourable decisions on specific questions in their interest (Busch 2007). Regime complexes also enable actor coalitions that are dissatisfied with an existing institution to engage in regime shifting by which they 'relocate rulemaking processes to international venues whose mandates and priorities favour their concerns and interests' (Helfer 2009, 39). What is more, states may even create a new international institution in order to relocate rule-making processes and contest a given institutional status quo. This variant of cross-institutional strategizing is called 'competitive regime creation' (Schneider & Urpelainen 2013; Urpelainen & van de Graaf 2015). 'Regime shifting' and 'competitive regime creation' are subsumed under the notion of 'contested multilateralism' (Morse and Keohane 2014; Kreuder-Sonnen & Zangl 2016) or 'counter-institutionalization' (Zürn 2018: ch. 7), which is defined as the utilization of international institutions by states, multilateral organizations, and non-state actors to change disliked institutions. All in all, the pursuance of cross-institutional strategic action implies that the emergence of regime complexes generates new forms of international politics. Dissatisfaction with existing international institutions is not answered by exiting the system or voicing it in the institution, but by playing the inter-institutional game of global governance (Faude 2015, ch. 2).

In their assessment of the effects these possibilities of cross-institutional strategizing exert on the prospects of cooperation among states, IR researchers differ. One camp argues that regime complexity weakens global governance because it enables states to circumvent costly obligations by forum shopping and even to pit one international institution against another. Underlying this argument is the notion that states intentionally create and/or exploit conflicting rules to pursue their parochial interests without taking the negative implications for interstate cooperation and global governance into account. In this view, fragmentation is a means that puts power again ahead of norms (Benvenisti & Downs 2007; Drezner 2013). Another camp argues that cross-institutional strategic action gives rise to interlocking governance structures that strengthen global governance by mobilizing the potential of functionally differentiated systems to govern complex cross-cutting issues. This argument is based upon the notion that, when determining their behaviour in regime complexes, states keep in mind the governance capacity of its elemental institutions. Thus, when using their possibilities for cross-institutional choice, they do not pursue their parochial interests, but act in ways that preserve the capability of the overlapping institutions to deliver the public goods that states are interested in. In this line of thinking, regime shifting and competitive regime creation are seen as a means to induce institutional change (Gehring & Faude 2013; 2014).

The theoretical arguments from both camps are empirically illustrated only by non-representative case studies. Thus, whether cross-institutional strategic action is impeding or enabling global governance is far from being answered satisfactorily. This constitutes a major lacuna in current scholarship and an important area for future research. Moreover, the focus on actor strategies in exploiting institutional density has bracketed, to some extent, the question of norm collisions and left open whether and under what conditions emerging overlaps identified by (legal) analysts become manifest interface conflicts through actor contestations. Finally, IR research on regime complexity concentrates on institutional interactions at the horizontal level and the ones between institutions rooted in the same issue area. It thus elides institutional interactions in the vertical dimension and those between institutions originating in different issue areas with different social purposes.

Our research group on Overlapping Spheres of Authority and Interface Conflicts in the Global Order (OSAIC) tackles precisely those questions left open by the literature on fragmentation and regime complexity. We make interface conflicts our central unit of analysis and study both vertical and horizontal conflicts that occur within and across 'spheres of authority.' The follow-

ing set of questions guides our analysis: Under which conditions do interface conflicts become manifest? What are the responses to conflicting rules? To what extent are these responses guided by normative principles? If responses are justified with reference to normative principles, what are these principles and how are they operationalized concretely? What consequences do the different ways of responding to interface conflicts have for the global order as a whole? We start from the assumption that interface conflicts create a demand for finding appropriate ways of dealing with them (Zürn & Faude 2013; see also Foellesdal 2013). The question of whether, how, and with what consequences this demand is met is then an empirical one (Stone Sweet & Matthews 2008). The question of whether such conflicts are managed appropriately is then decisive for the questions whether global governance declines or deepens as result of interface conflicts and legal overlaps (Zürn 2018). Against this backdrop, OSAIC seeks to *a)* grasp the variety of interface conflicts empirically, *b)* describe the variations in responses to interface conflicts, *c)* explain the observed variance, and *d)* develop a principled framework for the normative reconstruction and assessment of existing practices.

The goal of this paper is to introduce the conceptual and methodological approach of the research group and to devise the analytical framework used to study the handling of interface conflicts. We first introduce our perspective on the global governance system as characterized by loosely coupled and overlapping spheres of authority (Section 2). In a next step, we unpack our definition of interface conflicts as the central unit of analysis and discuss different techniques for identifying interface conflicts (Section 3). We then move on to the responses to interface conflicts (Section 4). Here, we conceive responses to range on a continuum from inaction, over purely functional mutual adaptation within the overlapping spheres of authority, to principled adaptation along constitutional values. The section develops a scheme to comprehend the varieties of responses to interface conflicts and provides a theoretical inventory of potential explanations for different outcomes. We conclude by foreshadowing the contributions of the single projects that are part of the research group (Section 5).

II. LOOSELY COUPLED AND OVERLAPPING SPHERES OF AUTHORITY

Our research group aims at generating systematic knowledge on how horizontally and vertically aligned spheres of authority coordinate their governance activities and on the normative quality of those coordinating efforts. In other words, our approach enables us to grasp, explain, and normatively assess variance in the coordination within and between different spheres of

authority – be they vertically or horizontally aligned. In doing so, we contribute to theoretical progress and advance empirical knowledge on the responses to interface conflicts. As a result, our approach allows us to ascertain and understand, in a far more comprehensive way than has previously been the case, the ways in which order and disorder is produced at central points of friction in the '(m)OSAIC' of an institutionally fragmented global governance system. To the extent that institutions and authority at the global level are consequential, the ways in which latent and manifest conflicts between them and with the domestic level are processed and resolved can be expected to provide us with key insights into the shape, the dynamics, and the normative structure of the global governance system.

We depart from a conception of the international political realm as being structured by partially shared and partially contested norms and rules containing at least some pockets of hierarchy with potentially competing claims to authority (Coen & Pegram 2018). We thus understand international institutions to be embedded in an international political system marked by an emergent normative order, as well as patterns of authority relationships and their contestation (Zürn 2018). Such a conception of the global governance system focusses our attention on the normative interfaces of overlapping 'spheres of authority' and the conflicts to which they may give rise.

More concretely, what do we mean by 'authority' and 'spheres of authority'? According to Max Weber (1968, 544), rule (*Herrschaft*)⁶ and authority are forms of power in which the accession to the desires of those exercising power is at least partially conditioned by the 'willingness' of those who are subject to that power. Our notion of authority, however, does not necessarily equate with blind and mindless submission (Arendt 1957). Authority rather involves dispensing with an exact examination of the specific judgment or decision, because such an examination would involve enormous efforts, while recognition on the basis of trust appears reasonable. The recognition of authority thus has advantages – and not only for the authority holder itself. Nonetheless, these advantages do not derive exclusively from a rationalist conception based on pre-defined interests. It is especially in situations without pre-defined interests that reflexive authority plays out. As Frank Furedi (2013, 52) states it, '[t]he need for a concept of authority only emerges when communities are forced to contend with uncertainty about questions who to believe, trust, follow or obey'. The recognition of external authorities is based on the knowledge about the limitations of one's own rationality, and thus the dependence on epis-

⁶ There are many translations of the German term *Herrschaft*: domination (Roth); dominancy (Rheinstein); imperative control (Parsons); authority.

temic constructions that identify these limits. One may label this ‘reflexive’ or ‘liquid’ authority (Krisch 2017; Zürn 2017).

While emphasizing the common feature of rule and authority as forms of power that are both based on recognition and deference, we distinguish the two terms according to their scope. Whereas rule is systemic and involves the recognition that force can be used in order to enforce rules, authority is limited to specific issues and functions, and it does not necessarily involve the acceptance of rule enforcement. While supreme courts hold authority, the modern state with its monopoly of the legitimate use of force and a general responsibility for the development of a given society exercises rule. To the extent that the state is depersonalized and that the rulers are bound by rules as well, it may be considered as a constitutionalized system of rule.

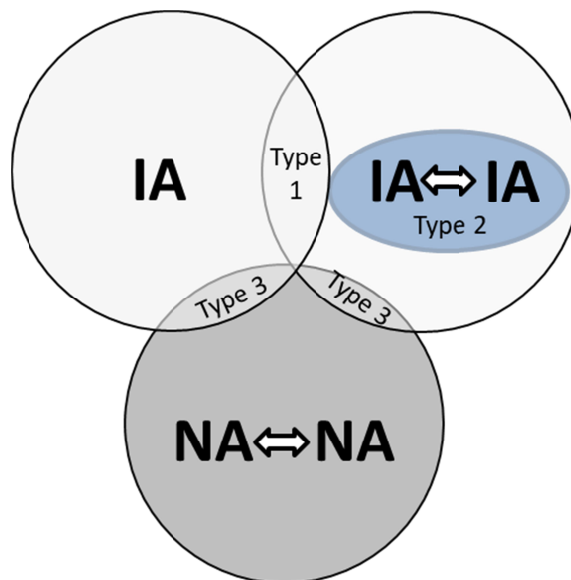
To the contrary, authority points to a functionally differentiated form of a right to do something that is specialized in the sense that it is limited to certain tasks and functions.⁷ International authority is therefore almost exclusively issue-area specific (Lenz et. al 2015) and follows identifiable social purposes. Accordingly, we define a ‘sphere of authority’ as a governance space with at least one authority that is held together and delimited by the actors’ common social purpose at a given level of governance. The actors and institutions converging around the goal of the promotion and regulation of free trade, for example, comprise a sphere of authority with the WTO as an international authority at its centre. Spheres of authority are thus to be distinguished from issue areas that are marked by a common policy problem or a connected set of problems (see Keohane & Nye 1977; Efinger et al. 1988) but may comprise competing social purposes.

Conflict potential arises *within* and *across* spheres of authority (see Figure 1). Internally, there can be more than one authority with overlapping mandates as well as several norms or rules that actors may pitch against each other. In the sphere of authority of free trade, for example, besides the WTO, there is also the UN Conference on Trade and Development (UNCTAD) and the multitude of preferential trade agreements (PTAs), whose regulations are seen by many analysts as overlapping with the WTO. Externally, spheres of authority do not exist in isolation, but are coupled with each other. In the absence of meta-authorities, however, the coupling remains

⁷ Note that limited scope is different from the limitations of authorities derived from the separation of powers. Both institutions with limited scope – like the WTO – and an encompassing state can have a separation of powers. See Möllers (2013) and Mendes & Venzke (2018) for discussions of the separation of powers principle in the context of rising international authority.

loose and initially uncoordinated. Many subject matters in world politics lie at the intersection of different spheres of authority, creating potential for goal conflicts between actors and institutions of separate spheres with different social purposes. Take the example of the subject matter of plant genetic resources: On one hand, it can be approached as a question of free trade and thus the protection of intellectual property as enshrined in WTO rules; on the other, it can also be approached as an environmental question and thus the protection of biological diversity as enshrined in the UN Convention on Biological Diversity (CBD) (see Raustiala & Victor 2004).

Figure 1: Overlapping spheres of authority, national and international



* IA (international authority); NA (national authority)

Type 1: horizontal interaction across spheres of authority

Type 2: horizontal interaction within a sphere of authority

Type 3: vertical interaction across spheres of authority

Interface conflicts within and across different spheres of authority can arise because of competing interests of involved actors, of normative incompatibilities, and of unclear boundaries (ambiguities). The research group focusses on the ways in which such interface conflicts are processed.

III. INTERFACE CONFLICTS

In order to analyse if and how interface conflicts are managed, it is first of all necessary to develop a clear-cut conceptualization of an interface conflict. The narrowest conceptualization is expressed in Jenks' famous dictum that 'a conflict in the strict sense of direct incompatibility arises only where a party to the two treaties cannot simultaneously comply with its obligations under both treaties' (Jenks 1953, 426). A very broad conceptualization, on the contrary, sees conflicts whenever there are different externalities affecting different spheres of authority – for instance, when resources employed in one sphere of authority are no longer available for other spheres. We opt for an understanding of interface conflicts which lies in between these two viewpoints in order to avoid formalism at one extreme and an impractically broad definition at the other. Thus, in addition to Jenks' notion of conflicting 'obligations' (impossibility to fulfil two obligations at the same time), we include also those conflicts that arise when explicit 'permissions' in one sphere clash with 'prohibitions' in another (e.g., a ban on some particular good for reasons of environmental protection vs free trade obligations) and those conflicts that derive from competing aims on the level of 'general principles' (privacy rights vs transparency regarding financial transactions).

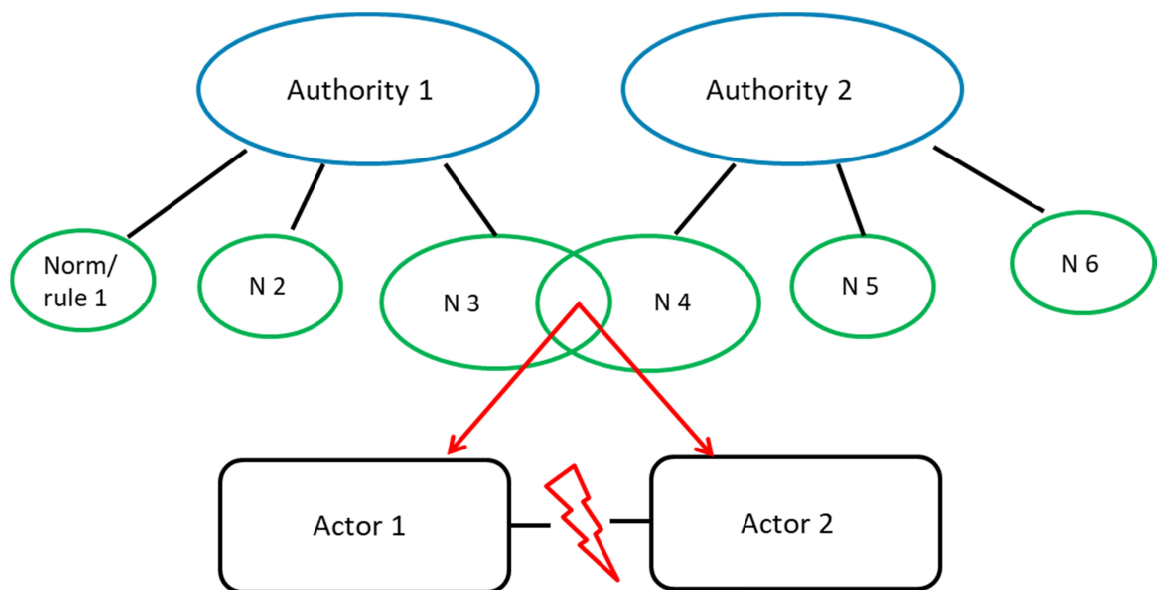
More fundamentally, our conceptualization takes a sociological perspective and sees interface conflicts not as objectively given. Before we speak of conflicts, they must be constructed and perceived as such by relevant actors in form of positional differences (see Rittberger & Zürn 1990). While there may be latent conflicts in the sense of rule incompatibilities that can theoretically be determined from an external (legal) standpoint, a manifest interface conflict only exists if different actors internally contend (for strategic or for normative reasons) that different norms or rules collide with each other – i.e., only if there are contradictory claims about what is normatively demanded (see Zelli 2011, 201–2).⁸ Importantly, this also implies that manifest interface conflicts may arise irrespective of whether the norms or rules invoked by the conflicting actors previously were in latent conflict according to legal observers. We thus give priority to the internal perspective on conflict.

In sum, then, we speak of an interface conflict within or across different spheres of authority when relevant actors perceive rules to diverge in such a way that the simultaneous attainment

⁸ We thus exclude conflicts that merely arise due to conflicting interpretations of one and the same norm. As soon as different interpretations of one norm are justified by reference to other norms, however, this may be seen as an interface conflict.

of the regulatory objectives within the different spheres of authority is seen to be incompatible or unattainable, or when they pretend such an incompatibility to pursue their interests. In other words, interface conflicts are defined as incompatible positional differences between actors about the validity or scope of international norms or rules in relation to other norms and rules. In these interface conflicts, different positions are justified with reference to different international norms and rules of which at least one is associated with an international authority (see Figure 2). An interface conflict is therefore a specific type of norm conflict that occurs in overlapping institutional structures that are situated either within one single sphere of authority or within two overlapping spheres of authority. It is triggered by the (evolving) normative expectations or strategic interests in these overlapping institutional structures.

Figure 2: Stylized depiction of interface conflict constellation



Interface conflicts can arise *within* and *across* spheres of authority. If a political organization comprises multiple social purposes, such as states or the UN, an interface conflict can even arise within a single political organization. Interface conflicts can furthermore arise on the same level of governance and across different levels of governance. We distinguish among three levels of governance: the global level, the regional level, and the national level. If inter-

face conflicts arise on the same level of governance, we speak of *horizontal* interface conflicts. If they arise across levels of governance, we speak of *vertical* interface conflicts.

IV. RESPONSES TO INTERFACE CONFLICTS

At its core, OSAIC is interested in the ways that interface conflicts are acted upon. Studying different responses to interface conflicts by different actors and analysing the institutional and political outcomes of the negotiation processes over the management of interface conflicts puts us in a position to better assess the consequences of institutional density and interface conflicts for the global governance system. In the first section, we begin by setting out criteria for the development of an empirically derived typology of conflict management and management outcomes. In the second section, we move to the analytical question of how to account for variance in responses to interface conflicts. Here, we develop first ideas about causal relationships between conflict and management types as well as between institutional preconditions and management outcomes.

IV.a Varieties of conflict management

While we are open to the empirical possibility that interface conflicts are ignored and/or deliberately not managed, leading to a persistent conflict, we do suppose that manifest conflicts regularly incite some form of conflict management (see Rittberger & Zürn 1990). In line with Zelli (2011, 207), we define the management of interface conflicts as ‘any deliberate attempt to address, mitigate, or remove any incompatibility between the [norms] in question’. These attempts are in no way predetermined to be rational, balanced, or technical. Just as the conflict itself, so too can its management be highly political. The concrete form of the management attempts is then an empirical question that should be telling, with regard to the functioning and normative structure of the emerging global governance system. For this endeavour, we need a typology to capture the varieties of conflict management.

Table 2: Categories for a typology of interface conflict management

Reference to norms	Substance of referenced norms	Institutional settings	Outcomes	
Without any reference to norms	E.g., rule of law, the principle of subsidiarity, the doctrine of sovereignty, and the principles of autonomy of the legal order, democracy, national identity, or human rights	Horizontal interaction without third party involvement	Symmetrical/asymmetrical distribution of costs and benefits	
Reference to particularistic norms				
Reference to common norms		Horizontal interaction involving third party dispute settlement	Distribution in line with	More powerful actor
Reference to universalistic norms		Vertical alignment		More epistemic and/or judicial support
				More civil society support

To develop a meaningful typology of interface conflict management, we introduce four categories, in which we distinguish the ways and means actors respond to interface conflicts (see Table 2). The first relates to the question of whether actors make *reference to norms* when advocating the one or the other side in an interface conflict and, if yes, what kind of norms are referenced. The second asks about the *substance of the referenced norms*, that is, what normative principles the rules or decisions regulating interface conflicts are based on. The third grasps the *institutional setting* in which conflict management takes place and, the fourth, the *outcomes* of the management attempts.

Concerning the *reference to norms*, dealing with interface conflicts can occur in four ways. On one hand, it is possible to address an interface conflict purely on the basis of the interests of the parties involved, and therefore *without any reference to norms*. This implies that an interface conflict is managed exclusively through strategic bargaining among the actors concerned and justified only in terms of interests. We refer to this as ‘unregulated conflict management’. On the other hand, however, interface conflicts can also be addressed by invoking norms in processes of deliberation rather than bargaining. Then, we speak of ‘regulated conflict management’.

Different types of conflict management can take different shapes. First, interface conflicts can be tackled by invoking *particularistic norms*: legal or political actors refer to norms that are

specific to their sphere of authority, but which have not been agreed to or referred to by all the parties involved – be they states, IOs, or societal actors. Second, an interface conflict can be dealt with by invoking *common norms*. This is the case if the concerned actors refer to norms that may be appealing beyond their sphere of authority, but which do not aspire to be or to become universal. Third, an interface conflict can be addressed by invoking *shared universal norms*.

With the concrete *substance of referenced norms*, we seek to determine which normative principles of conflict resolution are invoked in which cases to justify management choices and to analyse how these principles are understood and applied across different settings. Among the various tenets or doctrines that are invoked to justify giving priority to one norm over another are the rule of law, the principle of subsidiarity, the doctrine of sovereignty, and the principles of autonomy of the legal order, democracy, national identity, and human rights. For example, in determining whether European human rights norms might preclude the enforcement of a UNSC Resolution in Europe, the European General Court (EGC) (formerly known as the Court of First Instance) emphasized the international rule of law and functional reasons supporting it to justify the priority of UN law over EU human rights norms; but on appeal, the Court of Justice of the EU insisted that, given the EU's nature as an autonomous legal order, European human rights norms determined whether UN obligations could be implemented in Europe. We call these norms 'interface norms'. This comprehensive category encompasses normative principles and meta-governance norms.

Beyond the nation state, interface conflicts are dealt with in different *institutional settings*. First, such conflicts can be addressed horizontally, *without the involvement of a third party*, independent (at least to some extent) from the executive decision makers of the colliding orders. Second, interface conflicts can also be managed *horizontally by involving third parties*. This type of conflict management includes dispute settlement bodies and administrative agencies, which can belong to one of the colliding orders, but nevertheless possess a certain independence from the executive decision makers of that sphere of authority, or they can be completely independent from the colliding orders. Third, interface conflicts can be addressed vertically, where one sphere of authority is *embedded* in a broader one, and where the superiority of the latter is generally accepted, for instance, as is the case for federal systems and 'nested institutions' on the international level.

Finally, one can distinguish responses to interface conflicts in terms of *outcomes*. We analyse outcomes on two dimensions: first, we are interested in the *distributional effects* of the responses to interface conflicts; second, we are interested in the *effects the management types exert* on the ability of global governance institutions to facilitate cooperation among states.

While we leave the study of the latter to more inductive empirical exploration, we approach the former with a previously devised classification scheme. This scheme differentiates, first, whether the distribution of costs from the conflict settlement are distributed in a symmetrical or asymmetrical way. By costs, we refer in particular to the adaptation costs incurred by actors and institutions adjusting their practice, mandate, or secondary law to accommodate the interface conflict with another norm or rule. If the distributional effect is asymmetrical, we differentiate, second, whether the distribution is more in line with a) the more powerful actors, b) those actors with the greater epistemic and/or judicial support, or c) those actors with the stronger support by civil society organizations.

IV.b. Accounting for variance in the management of interface conflicts

After having established an inventory of interface conflicts and their management attempts, our research group aims at answering two main questions. First, one set of projects focuses on the question of how we can make sense of the observed practices from a normative point of view. This is an exercise of ‘normative reconstruction’: Is it possible to reconstruct the observed practices as being responsive to relevant normative concerns? To the extent that this is the case, what are these normative concerns and what do they tell us about the normative structure of the global governance system? Studies of this sort will typically resort, at least initially, to existing normative theories of global order such as global constitutionalism or pluralism (see Introduction) and try to match the observed empirical reality to these theories. To the extent that the practices diverge, new reconstructive theories and categories could be developed. Second, another set of projects focuses on the question of what are the variables that help explain how the central decision makers in overlapping spheres of authority and other relevant actors respond to interface conflicts. This is an exercise of ‘causal analysis’: When are interface conflicts managed in regulated or unregulated ways? Why do actors sometimes refer to particularistic and sometimes to universalistic norms? And under what conditions are the distributional effects of the management outcome in line with power or in line with judicial support?

Let us outline some first thoughts on potential sources for causal variables in the following. A first factor influencing the type and outcome of conflict management might be the underlying *type of conflict* that is being addressed. One distinction that we expect to make a difference in this regard is whether the conflict occurs within or across spheres of authority. That is, conflict management is likely to take different forms if the interface conflicts are about norms or rules rooted in one and the same social purpose or in competing social purposes. Given the overall goal-alignment of institutions in within-sphere conflicts, positional differences should normally relate to 'turf battles' over resource allocation and institutional prevalence (interest conflicts) or to conflicts over means; not to fundamental normative disagreement. Two expectations derive from this: On one hand, conflict management is likely or at least possible to involve bargaining without reference to norms or negotiations with reference only to particularistic norms. In this case, an asymmetrical distribution of costs and gains in line with the more powerful actors is the likely outcome. On the other hand, however, because all actors share a commitment to the overall regime goals, conflict management is likely to relatively quickly achieve rule consistency by way of a division of labour between institutions, or their nesting or displacement. In across-spheres conflicts, by contrast, the colliding norms reflect fundamental goal conflicts over the question according to which social purpose a certain subject matter should be governed (conflict over values). Hence, expectations about conflict management should be inverse: It is likely to involve the invocation of common or even universalistic norms and principles to act on the conflict in one way or another. Alternatively, legal collision norms can be used as basis of conflict management as well. More technical and specific argumentative resources like efficiency or resource advantages are less likely given the fundamental normative disagreement. This should also increase the importance of epistemic and/or civil society support to determine the eventual distribution of costs and gains from the management outcome. On the other hand, however, the management of across-spheres conflicts is less likely to quickly lead to normative consistency since actors and institutions are pulling in different directions.

A second source for causal variables to account for differences in conflict management could be the *type of the colliding norms and rules* that actors invoke in interface conflicts. For example, variable degree of legalization of formal rules (Goldstein 2001) may have consequences on the type and outcome of conflict management. If 'hard law' is at stake, where authority for interpreting and implementing the law is delegated, conflict management is much more likely to take place in a horizontal setting involving third party actors than if 'soft law' is at stake (Ab-

bott & Snidal 2009). In terms of outcomes, we might expect that those actors who invoke harder law achieve a more favourable settlement than those who invoke softer law, because it is assumed that more legalization increases the normative traction of the rules in question. Similarly, the distinction between established and emergent social norms may hold theoretical leverage in this regard (Finnemore & Sikkink 1998). Those conflict parties invoking norms that are broadly shared and internalized are more likely to assert themselves with their settlement preferences than those conflict parties that invoke new normative standards that are only on the verge of becoming widely accepted. Moreover, the extent to which a norm has previously been contested can reinforce or mediate this effect (Wiener 2014).

The third pool of potential explanatory factors could be the *distribution of power* among the actors expressing positional differences in an interface conflict. For example, according to distributive variants of rational institutionalism (Krasner 1991), a highly imbalanced distribution of power among the conflicting parties would allow the more powerful faction to use its bargaining power to impose its will on the less powerful faction. This should lead to unregulated conflict management with an asymmetrical distribution of costs and benefits in line with the more powerful actors. By contrast, if there is a more balanced distribution of power among the conflict parties, normative argumentation and judicial avenues become more important. This should increase the likelihood of regulated conflict management whose outcome reflects judicial, epistemic, or civil society support rather than bargaining power.

Taken together, the projects in the ‘explanatory camp’ draw on independent variables that may be subsumed under the rubrics of (distributive and functional) rationalism, as well as (value and legal) constructivism.

V. MAPPING THE CONTRIBUTIONS BY THE GROUP

OSAIC comprises six individual research projects that contribute to the group’s overall research objectives and make furthermore important contributions to their respective sub-fields. Four projects are headed by political scientists (Anna Geis, Anna Holzscheiter/Andrea Liese, Markus Jachtenfuchs, and Michael Zürn/Benjamin Faude) and two by legal scholars (Christoph Möllers and Nico Krisch). The group is complemented by a unit (Z-project) tasked with the coordination and integration of the work carried out by the single projects (Michael Zürn/Christian Kreuder-Sonnen). The single projects have the following substantive outlook:

- The project group headed by *Anna Geis* studies the institutional complex of African security governance. It is characterized by a dense web of international, regional, and national institutions that partially overlap in mandate and membership. The two key players the project focusses on are the UNSC and the African Union (AU). In several case studies of the authorization, extension, and review of military missions in Africa, the project identifies vertical interface conflicts between the UNSC and AU in particular as they pertain to the scope and validity of human rights versus sovereignty norms. After identifying interface conflicts, the project analyses how key actors within the emerging African security governance architecture perceive, articulate, and manage these interface conflicts in the context of military deployments and what effects the different forms of conflict management have. Particular attention is paid to the regressive implications for norms of seemingly functional forms of conflict management such as the emergency of a system of division of labour between robust military enforcement and peacekeeping.
- Following an inductive research design, the project group of *Anna Holzscheiter* and *Andrea Liese* aims at generating hypotheses on when and how latent norm conflicts are addressed in global governance. In a reconstructive first step, situations in which actors perceive policy problems as presenting them with incompatible normative demands are identified. The project thus explores the conditions under which manifest interface conflicts arise in the first place. In an explanatory second step, the procedural norms actors refer to in their responses to such perceived norm collisions are analysed. By building upon comparative case studies of norm collisions across a range of policy fields, namely drug use and control, trade with GMOs, and organ trafficking, the project examines which procedural norms are guiding the answers of states and IOs to potentially conflictive overlaps and ensuing interface conflicts. Thereby the project contributes to the research group's overall aim of identifying and explaining responses and management efforts with regard to interface conflicts.
- By examining a wide range of judicial and quasi-judicial decisions, *Christoph Möllers* and his project group aim to analyse which legal reasoning and argumentative strategies these third-party actors employ in adjudicating interface conflicts brought before them. Put differently, they ask: Under which conditions do third-party actors address interface conflicts by providing solutions, and what are their argumentative strategies

in either preventing or managing them? The project thereby analyses the involvement of third parties, namely courts and quasi-judicial bodies, in the identification and management of interface conflicts. It not only intends to scrutinize the rationale provided by those actors in managing interface conflicts, but also aims to analyse what role general norms of international law can play in this regard.

- *Michael Zürn and Benjamin Faude* in their project seek to explain variance in the responses to interface conflicts by various actors involved in global governance. The focus lies on interface conflicts that arise over norms and rules emanating from IOs with supranational authority. For this specific subset of interface conflicts, the project aims at establishing a comprehensive data-set capturing OSAIC's observations of interest: the type of conflict, the actors involved, the type of conflict management, and the outcomes of conflict management. Against this empirical backdrop, the project infers under what conditions particular actors resort to particular responses to interface conflicts.
- The project headed by *Nico Krisch* aims to reconstruct the emergence of interface norms that govern the relations between different bodies of norms and could lead to a greater enmeshment or even integration of these legal orders. The project focusses on the challenges the growing density of interactions between spheres of authority poses for the traditional separation of domestic and international legal orders. Thereby, greater linkages and interaction as well as strategies of greater distancing can be perceived, which produce new configurations on both the formal and the substantive side of the interfaces between normative orders. By particularly focussing on the realm of international economic governance, the project aims to trace interface norms as well as their substantive content and the indications these give for a broader account of the governing norms of global law. The project thereby aims to advance our theoretical understanding of the post-national legal order.
- The project headed by *Markus Jachtenfuchs* tracks the emergence and evolution of interface conflicts in the area of internet governance. Internet governance constitutes a rapidly evolving field that encompasses a variety of actors, ranging from public to private and from national to trans-/international. The substantive focus is on issues of content control and privacy protection. Here, the project not only analyses the evolution of interface conflicts over time, but also examines the normative justifications employed by

relevant actors, as well as the outcomes of those conflicts. It functions as a contrast project for assessing how the analytical apparatus of the OSAIC framework can be employed in non-typical contexts that are characterized by a high degree of liquidity and dynamism as well as a strong role of private authority.

Since responses to interface conflicts represent a heavily under-researched topic, our group aims first and foremost at a broad coverage of horizontal and vertical interface conflicts. Thus, the individual projects are composed in a way that they enable us – as a collaborative research group – to draw a representative picture of the interface conflicts that affect global governance. What is more, some individual projects (Geis, Jachtenfuchs, Krisch,) zoom in on individual policy fields and analyse more thoroughly the responses to interface conflicts than it is possible in the second group of projects, which aim primarily at a broad coverage of interface conflicts (Holzscheiter and Liese, Möllers, Zürn and Faude). All in all, the composition of our individual projects warrants the representative coverage of different issue areas. The proposed projects together embrace a diverse range of issue areas, which, on an aggregate level, precludes systematic distortions in this regard. Not only do single projects cover the most important issue areas, such as security (Geis) and trade and finance (Krisch), we also study the rapidly evolving field of internet governance, which cuts across traditional issue areas (Jachtenfuchs). Projects taking an overarching approach to the identification and analysis of interface conflicts, which is independent from specific issue areas (Holzscheiter and Liese, Möllers, Zürn and Faude), will certainly also cover further and potentially more niche policy domains in which norms collide.

Moreover, we aim at tackling questions of normative reconstruction *and* of causal analysis. According to the disciplinary predispositions, the political science projects contribute explanatory studies and the legal projects contribute reconstructive studies. However, at least some also venture into the field of the neighbouring discipline: Holzscheiter and Liese, for example, aim at reconstructing situations in which actors perceive policy problems to present them with incompatible normative positions. Conversely, Möllers examines a wide range of judicial and quasi-judicial decisions with a view to explain under which conditions a latent interface conflict in a given situation materializes into a manifest interface conflict. Hence, not only are both types of research questions covered by the research group, they are also partially integrated in single projects.

As a whole, the research group wants to bring about project-spanning results from a systematic utilization of the insights generated in the single projects. Both the question of what the reconstructive findings might imply, on aggregate, for describing and assessing the global order as a whole, and an integrated theory to account for variance in reactions to interface conflicts across cases exceed the analytical capacities of any single project alone. This is where the Z-Project (Michael Zürn & Christian Kreuder-Sonnen) comes in. Its main purpose is to lay the foundations for constructing a comprehensive but consistent 'big picture' of interface conflicts within and across overlapping spheres of authority. An integral part of this objective is the establishment of a common database of interface conflicts that assembles and complements the data from the single projects in order to systematize the results and enable descriptive and causal inferences at the project's macro-level. After the completion of the OSAIC project, the database will be made available to the public in order to enable further research.

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