

# Beyond Contractualism: Analysis of the 'Problem of International Authority'

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## Table of Contents

<b>Chapter 1: Introduction.....</b>	<b>1</b>
1.1 Purpose of the Research and Problem Analysis .....	1
1.2 Expected Thesis of this Research: Research Questions & Hypothesis .....	14
1.3 Aims and Objectives:.....	17
1.4 Significance of the Research: .....	18
<b>Chapter 2: Literature Review .....</b>	<b>21</b>
2.1 Literature on the Concept of International Authority: .....	21
2.2 Testing for authority: The Problem of International Authority Scholarship .....	31
2.3 Contractual and Command-oriented Authority Scholarship .....	43
2.4 Authority Legitimation, De-legitimation, and Re-legitimation Literature.....	45
2.5 Scholarship on the Dynamic, Non-unitary and Fragmented Character of International Authority.....	53
2.6 Alternative – Beyond Contractualist Authority Literature.....	56
<b>Chapter 3: Research Methodology &amp; Conceptual Framework.....</b>	<b>72</b>
3.1 Research Methodology: .....	72
3.2 Process-Tracing Analysis Method: .....	74
3.3 From Philosophical Normativity to Empirical Normativity of Authority in Global Governance .....	79
3.4 Shifting the Focus from Formal ‘Delegation’ to the ‘Development’ of Authority Over Time: A Relational Perspective of Authority .....	81
3.5 Alternative Model of Authority: Building on the Deference Model to Develop an Account that Goes Beyond the Solid and Contractual Forms of Authority. ....	84
3.6 Going Beyond the Westphalian Paradigms of International Authority: Understanding the Multiplication of Authorities in Global Governance .....	87
<b>Chapter 4: Analysis and Case Studies .....</b>	<b>89</b>

4.1 Empirically Understanding and Analysing Pre-modern Authorities: A Case Study of the Roman Empire .....	92
4.2 Conceptual Framework of Authority in Global Governance is Problematic: Analysis of the ‘Problem of Authority’ in Global Governance.....	125
4.3 Contrasting Different Models of Authority: Deference is not the Same as Obedience, and Consent and Authority is not the Same as Legitimate De jure Rule: .....	129
4.4 The Rise of New & Alternative Forms of Authorities in the Modern Global Governance Structure: Liquid & Reflexive Characteristics of Authority .....	139
4.5 Liquid and Reflexive Characteristics of Authority in Case Studies of the UN Security Council and the WHO: .....	152
4.5.1 A Case Study of the United Nations Security Council (UNSC): An Anomaly in the Global Authority Structures.....	154
4.5.2 A Case Study of the World Health Organisation (WHO):.....	170
4.6 Implications of the New Authorities in Global Governance: Challenges for the Analysis of Authority Structures and Questions of Legitimation: .....	175
4.7 The Multiplication of Authorities Between and Beyond the Public-Private Divide: Understanding New Authorities in Terms of Institutionalization, Legalization, And Participation .....	181
4.8 Absence of Habitual Obedience to Authority and Binding Legal Standards to Satisfy Expected Legitimacy of Authorities in Global Governance:.....	189
4.9 Public International Law is Too State-Centric: A Case Study of Private Outer-Space Companies.....	197
4.9.1 Space Exploration: The Rise and Competitiveness of the Private Sector:.....	198
4.9.2 Legal Background:.....	202
4.9.3 How does the Case Study of Private Outer-space Companies Expose the Problematic Character of Authority in Global Governance?.....	207
4.10 State-centric Global Governance: A Case Study of Big Tech Companies and Data Capitalism, a Governance Problem:.....	217

4.10.1 What is Missing from the Current Regulatory Perspective on Data?.....	221
4.10.2 Risks Relating to these Tech Companies Taking Over Public Tasks but Staying Outside the Normative and Legal Framework: .....	223
4.10.3 Artificial Intelligence: Mapping Corporate Responsibility:.....	226
4.10.4 The Question of Tech Corporations’ Legitimacy .....	227
4.11 Global Human Rights Responsibilities, Going Beyond the Westphalian Paradigm of Human Rights Protection: A Case Study of Private Military Security Companies (PMSCs) .....	231
4.11.1 PMSCs: The EU Borderescapes and Migration Policies: .....	240
<b>Chapter 5: Conclusion .....</b>	<b>249</b>
5.1 Authorities Changed and Developed Over Time: A Historical Approach .....	253
5.2 Conceptual Understanding of Authority is Flawed: Critical Approach .....	258
5.3 Reimagining Authority Beyond Contractualism: Innovative and Adaptive Approach....	264
5.4 Why a Broader Conceptual Framework?.....	268
5.5 Research Limitations and Tasks for Future Research: .....	270
<b>References.....</b>	<b>272</b>

## Lists of Figures & Tables

### List of Figures:

Figure 1: Authority Definition .....	2
Figure 2: International Authority's Elements and Purpose .....	8
Figure 3: Broad Structure of Global Governance Authorities.....	9
Figure 4: Relational Concept of Authority: A Product of Socialization .....	27
Figure 5: Identifying Authority: a Complex Process.....	34
Figure 6: Authority Meaning Controversial .....	36
Figure 7: Authority's Legitimation, de-legitimation & re-legitimation process.....	46
Figure 8: Modern Authority not inferior but complementary to Freedom.....	111
Figure 9: Conceptual Framework of Authority is Problematic .....	127
Figure 10: Authority and Deference: Source (Krisch 2017) .....	133
Figure 11: Classification of Authority.....	134
Figure 12: Liquid Characteristics of the UN Security Council's Authority .....	156
Figure 13: Reflexive Characteristics of the UN Security Council's Authority.....	167
Figure 14: Global Governance Institutions' Exercise of Authority .....	177
Figure 15: Extending the Two-pole Authority Constellation .....	182
Figure 16: GGIs: Three-Pole Authority Constellation.....	185
Figure 17: Components Shaping Authority.....	188
Figure 18: Production of Standard Instruments .....	193
Figure 19: NASA's share of the U.S. Budget.....	198
Figure 20: Outer-Space Governance Legal Instruments.....	203
Figure 21: PMSC Regulation Instruments .....	237

### List of Tables:

Table 1: Wider Understanding of Authority .....	49
Table 2: Critical Overview of the Extensive Literature Review.....	63
Table 3: Case Studies .....	83
Table 4: The WHO's Authority .....	172

## Abstract

This research study aims to delve deep into what authority is in contrast to power and persuasion and how it becomes established in global governance. It focuses on the multiplication of authorities under the hypothesis that authority, its nature, functions, and grounds of legitimation have changed and developed over time. Thus, there are multiple and new authorities at play in global governance, which go beyond the state, the public-private authority constellation, and the simple command-and-obedience framework of solid authority. This offers a scholarly reflection on the problematic characteristic of the conceptual framework of authority in global governance. The study argues that, despite the change and growth of authority structures beyond the Westphalian paradigms of governance, most accounts still employ state-centric, contractual, and 'solid' authority models in state imagery under a simple public-private authority divide, borrowed from the domestic realm, and focus primarily on commands issued by single institutions. Such approaches to the study of international authority tend to underestimate the extent of authority in global governance and fail to recognise that authority can emerge from non-fixed entities beyond the formally established and traditional structures of authority. This leads to a failure to understand and conceptualise authority in global governance, which in my study is referred to as the problem of international authority. This study, by using an interpretive comparative historical analysis method, tests the efficacy of traditional conceptual frameworks through selected case studies of new authorities which go beyond the public private constellation and do not exclusively function with command-and-obedience arrangements. It also makes use of the inductive theory-building approach by arguing how new authorities can be made sense of in global governance and how they can be made more accountable and more globally responsible, like state authorities and state-delegated authorities. In line with the given research problem, and by taking over the task of understanding authority beyond contractualism, my study shows that there is a scholarly need to reconstruct, redefine, and relocate the concept of authority in modern and more intelligible frameworks in the light of authority's liquid and reflexive characteristics.

**Keywords:** Beyond contractualism, international authority, multiplication of authorities, private authorities with public functions, conceptual framework of authority

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## Chapter 1: Introduction

### 1.1 Purpose of the Research and Problem Analysis

Authority is a core concept in politics and law, and it has been given great attention in the global context in recent years. Traditionally and by definition, authority is rightful and legitimate rule, where an authority A, commands the ruled B, to obey or adapt to A's rules. It shows that A has a right to issue such commands and there is a corresponding obligation on B's part to abide by A's rules. In Bogdandy et al's words, 'authority' refers to the binding production of standard instruments, where it 'modifies the legal situation of a different legal subject without its consent' (Bogdandy et al. 2008, p. 1382). This is a very narrow understanding of authority, typically used in contractual command and obedience authority model in state imagery. However, in global governance, authority refers to the exercise of international public authority, which is the ability to rule and govern oneself and others and engage in developing, interpreting, and implementing norms and laws across national borders. Different international institutions which come together and form international authority structures exercise public authority at global level by producing standard instruments of rule, both binding and non-binding, to deal with trans-national issues (Bogdandy et al. 2008). The present day's globalized world demands effective international authority structures: Consider climate change, epidemics, financial markets, military security, trade flows and human rights; they all manifest global challenges and a shortfall of global governance would just result in uncoordinated climate policies, uncontained epidemics turning into pandemics, recurrent financial crisis, arms proliferation, trade protectionism, and human rights abuses. Addressing these global challenges and ensuring global common good with national and local authority structures alone is, at best, insufficient and at worst detrimental.

If authority simply implies a right to decide and an obligation to follow, then the concept has been effectively marginalized in global governance, as well as in International Relations studies (IR). It is important to be clear what authority means and what it does not mean. Authority is a relation among actors, where one group is recognised as having both the right and the competence to make binding decisions for the rest of the community (Cronin and Hurd 2008,

p. 6). Authority is more than the ability to get people to do what they otherwise would not do; it often involves telling people what right thing to do' (Barnett 2003, p. 170).

There is no definite and unified explanation of authority because there are divergent understandings of the locus of authority and the sources of authority. Jorg Kustermans and Rikkert Horemans define authority 'as power taken to be legitimate' (Kustermans and Horemans 2022, p. 206). It is different from the definition of authority as legitimate power. Here power refers to the ability of an actor A to influence other actors and to direct their common affairs. whereas authority refers to the arrangement, where those actors consider it legitimate that actor A guides them and directs their common affairs. They do not simply tolerate but accept A's authority. This definition is included in my study for it also approaches authority as a social fact. Secondly, it also helps in drawing a distinction between authority and power because their definition of 'authority as power taken to be legitimate' is a variation of 'authority as legitimate power', which clearly shows a focus on the sociological analysis of authority.

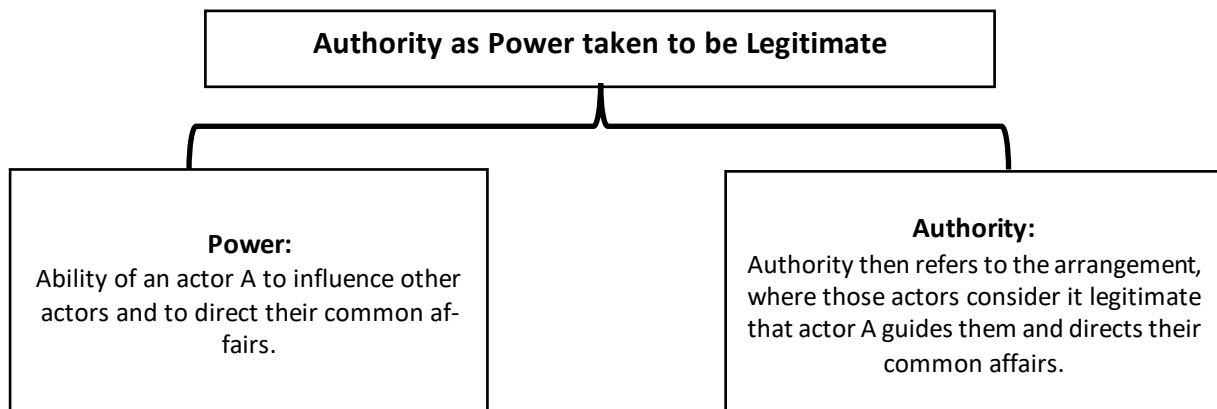


Figure 1: Authority Definition

Authority is usually considered the most effective way of sustaining social and political order. Alternatives to 'authority' are 'power' and 'persuasion'. Power upholds order by means of the threat of the use of force. When the army gets deployed in a state's capital under an emergency, we observe power upholding order. 'Persuasion' sustains order by means of reasoned arguments. When a Climate Change international organisation holds a summit on climate change, we see persuasion upholding order.

Authority, in contrast, sustains order through an act of 'natural or rational voluntary deference'. The deference model explains the authority relationship beyond the command and

obedience framework. When a son idealizes his father and tries to act and do things his way, we observe natural deference in terms of instincts, customs or habits upholding order (Furedi 2013). When states and societal actors recognise, accept and respect obligations formulated by international and trans-international organisations without being forced upon them, though these run counter to their interests, we observe rational voluntary deference upholding order (Zürn 2018). In fact, when the word 'authority' was used in its original Latin form by Augustus the Emperor of Rome, his concern was to have something far more important than just military or political power. Augustus's such distinction between power and 'auctoritas' (authority) showed the world that had begun to understand that something more than force was needed to sustain order. However, since Augustus's time, there has been difficulty in properly understanding and conceptualizing the 'possession of something more than power' (Furedi 2013, p. 1). If authority is to be defined, it must be in contrast to both coercive power and persuasion. In Arendt's (1970, p. 45) example; 'a father can lose his authority by beating his child or by starting to argue with him; that is, either by behaving like a tyrant or by treating him as an equal'.

Therefore, this research study aims to delve deep into what authority is in contradiction to power and persuasion and how it gets established in global governance. It focuses on the multiplication of authorities under the hypothesis that authority, its nature, functions, and grounds of legitimation have changed and developed over time. Thus, there are multiple and new authorities at play in global governance, which go beyond the state, the public-private authority constellation, and the simple command-and-obedience framework of solid authority. This offers a scholarly reflection on the problematic characteristic of the conceptual framework of authority in global governance.

This is because, despite the change and growth of authority structures beyond the Westphalian paradigms of governance, most accounts still employ state-centric, contractual, and 'solid' authority models under a simple public-private authority divide, borrowed from the domestic realm, and focus primarily on commands issued by single institutions (Krisch 2017). It is argued that such approaches to the study of international authority tend to underestimate the extent of authority in global governance and neglect the emergence of new authorities which go beyond the state and do not neatly fall in the traditional two-pole public and

private authority constellation (Mende 2020), thus leading to a narrow understanding of global governance.

Building on a broader understanding of authority, this study employs an alternative conception of authority embedded in its liquid and reflexive characteristics.<sup>1</sup> This study does not only analyse the multiplication of authorities in global governance beyond the state and public-private divide by including the case studies of non-state private actors, but it also covers historical phenomena, like the shifting forms, sources, and functions of pre-modern authorities from medieval to modern global societies. The study tries to shift the focus and reorient approaches to international authority on the empirical grounds of plurality of authority structures emerging in the contemporary world from social processes without any formal or legal basis. They often function on non-traditional and informal sources of legitimation. The purpose here is to show not only the fact that global governance comprises of multiple authority structures – which have different legitimation and functional grounds – but to also provide an account of shifting sources, functions, and the nature of authority – which ultimately necessitates a shift in the conceptual frame of studying international authority beyond the state imagery. Furthering my study's agenda for a systematic and comparative research on multiplication of authorities in global governance, I also bring the authority-legitimacy link under discussion more on comparative lines. In this vein, my study poses a question: How are the grounds and sources of legitimation of these new authorities similar to or different from those of pre-modern authorities and other forms of authorities in global governance, either in the past or in the present?

Although politics is still a struggle for authority, it is the distribution of authority, its forms and functionality that have changed. It not only brings different actors into play on the global landscape, but authority also attains compliance differently. Rosenau (1992), on the transformation of authority, also argues that compliance is no longer obtained only through formal-

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<sup>1</sup> **Liquid authority** refers to authority's high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and to control in global governance. It tends to undergo changes and acts strong in some issues and weak in others. Under the liquid conception, authority is understood in a sense that it flows, does not have fixed shape, and is difficult to explain under some predefined frameworks and within the two-pole public-private authority constellation. In contrast, the **reflexive concept of authority** (by Zürn 2018) refers to authorities which are marked by a constant legitimation cycle, and which do not draw their legitimacy from traditional sources like the right to rule or any other contractual and de jure arrangements. Authority in this sense is not eternally given, but constantly reflected and reviewed.

legal contractual legitimacy (as in the case of states and solid delegated international authorities), but rather also through the common needs of all the actors involved; in other words, through the normative principles of rightness and rational voluntary deference, where states recognise and acknowledge the limitation of their knowledge base. In fact, international authority today has produced a political system of its own that consists of normative principles, loosely coupled spheres of both political and epistemic authorities, reflexive authorities, and specific legitimation narratives (Zürn 2018).

This is how today's international authority is different from past authorities in terms of sources, functions and even legitimacy. But this does not necessarily suggest that authority is getting weak or disappearing. Rather, it is being transformed into multiple or new forms of authority, which produce different instruments of exercising authority (both binding & non-binding) and employ new strategies for inducing deference. This makes them different consequential.<sup>2</sup>

As rightly put by Rosenau (1992), authority involves more than just a government: one can observe that the regulatory processes in our modern global society are not limited to the nation-state or just the solid, command-and-obedience-based political authorities. Understanding authority on broader lines beyond contractualism allows for a better understanding of the different centres of governance that can emerge beyond the formally and legally established traditional structures of authority. This refers to actors beyond the simple two-pole public-private authority constellation, whose actions have the capability of generating authority and consequently paving the way for informality and multiplicity of governance institutions and tools. Because, today, societal regulations and rules are also produced on other levels besides the national (e.g., governance through global, regional, and local institutions) and even between and beyond public and private governance structures (e.g., rating agencies, business authorities, and regulation through market and civil society actors). Therefore, the concept of authority is no longer – as in traditional political/philosophical theory – confined to the nation-state alone or to a command-and-obedience arrangement. It has grown

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<sup>2</sup> The term 'different consequential' is used in my study as a way to shed light on the multiplication of authorities in global governance, which function beyond the typical command and obedience framework and produce different behavioral implications. It shows that global governance can occur by more than one type of actor from non-fixed and non-legal structures of authority. It reflects on the effectiveness of authorities in modern global governance by referring to new and different strategies employed by authorities in global governance for inducing deference, obedience and bringing change.

beyond contractual understandings of state-model authority in a strict command-and-obedience framework. Nor can authority in global governance be classified strictly in the traditional public-private authority constellation, because, as Bogdandy et al. (2008) argued, in global governance, any governance activity (be it by state-delegated authorities or private) is considered as an exercise of international public authority if it impacts others and reduces their freedom. Therefore, this study, by employing the liquid concept of authority, argues that authority can also take more flexible forms and can be characterized by a lower degree of consolidation and a significant dynamism in the configuration of authority structures.

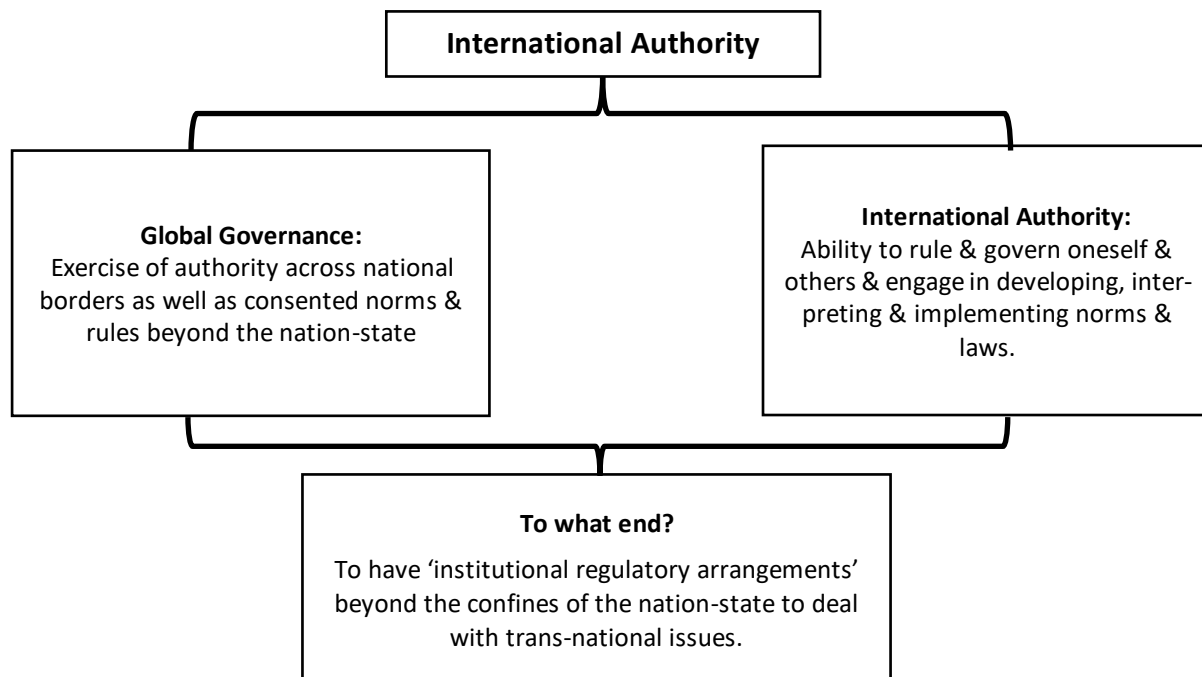
Since authorities in our modern global society have grown beyond the state and the traditional public-private authority constellation, I argue that the conceptual understanding of authority in global governance should be likewise carried beyond the Westphalian paradigms of public authorities in order to make sense of the newly emerged authorities on the global landscape. Such a broader study will first help us in redirecting the empirical inquiries and redesigning the central study questions about authority; in particular, what authority is in global governance, how authority is established in an international context, what are its sources, how they have evolved over time, and the ways through which authority can be made more accountable and legitimate.

Secondly, it will also initiate a discussion on the multiplication of authorities and their regulation in the face of the rise of new global policy areas like outer-space research and resource exploration by corporations, or human rights responsibilities of international private corporations like private military and security companies (PMSCs) and some big tech companies.

Both these new authorities and areas of global concern outgrow the national structure of governance and jurisdiction. At the same time, authorities not only go beyond the traditional, solid, and delegated authority framework of command and obedience but they also do not fall neatly into the public-private constellation. Such a peculiar set of new authorities might even be private authorities in form and nature, but they quite frequently function in public spheres, called private authorities performing public functions or what Bogdandy et al. (2008) terms 'exercising international public authority'.

For understanding authority in global governance, it is necessary to clarify certain conceptualizations which are core in the study and are repeatedly used. 'Global governance' refers to

the exercise of authority across national borders, as well as the consented norms and rules beyond the nation-state (Zürn 2018). 'International authority' (which refers to the exercise of authority by different global governance institutions) is the ability to rule and govern oneself and others and take part in developing, interpreting, and implementing norms and laws on the global level (Mende 2020). One wonders to what end global governance or international authority is established. The simple answer comes from Tallberg et al. (2018) that it is done for the purpose of having institutional regulatory arrangements beyond the confines of a nation-state in order to deal effectively with transnational issues and global challenges (refer to the figure below). The rationale for treating global governance or international authority as a full range of institutional regulatory arrangements beyond the nation-state is based on the fact that global governance rules include both norms-based voluntary non-binding measures and legally binding commands and regulations ranging across different policy issues, like human rights, laws like EU directives, standards such as internet protocol addresses, or moral codes of conduct like corporate social responsibility. Though states are usually party to the formulation and administration of global rules, yet global governance also takes into its fold some types of non-state actors, whose authority may not even fall neatly into the public-private constellation, but they exercise international public authority because they impact others and reduce their freedom.



*Figure 2: International Authority's Elements and Purpose*

Therefore, first, global governance here is neither to be understood merely as international organisations, nor as a world government, but rather as 'the full range of institutional regulatory and governance arrangements under an authority-based approach which function beyond the territorial confines of the nation-state' (Tallberg et al. 2018, p. 5).

Second, international authority refers to the exercise of authority by different global governance institutions, both delegated by states and non-state-delegated. Third, global governance institutions (GGIs) come in various forms with varying behavioural impacts. It would be wise to categorize these different forms of authority or global governance institution based on their structure, function, and sources of legitimation (see Figure 2 below). However, drawing a clear and distinct line between them is usually difficult because they often overlap, tend to be strong in certain areas and weak in others, and can act both as public and private entities due to their liquid characteristics (refer to Chapter 4, sections 4.7 – 4.10 on new authority case studies). In the words of Zürn (2018) and Mende (2020), global governance includes private actors referring to public authority.

Therefore, this study, in the face of such liquid and reflexive characteristics of authorities in global governance, proposes to go beyond state-focused authorities and include new authorities in the analysis which cannot be neatly classified as public or private, nor understood



under the traditional solid or command-and-obedience frameworks. In short, global governance can be understood as comprising structures and processes of coordination and interaction among governments, intergovernmental organisations and non-state actors, across and between the public-private divide, with a collective purpose to make and implement global rules and norms for dealing with transnational problems (Tallberg et al. 2018).

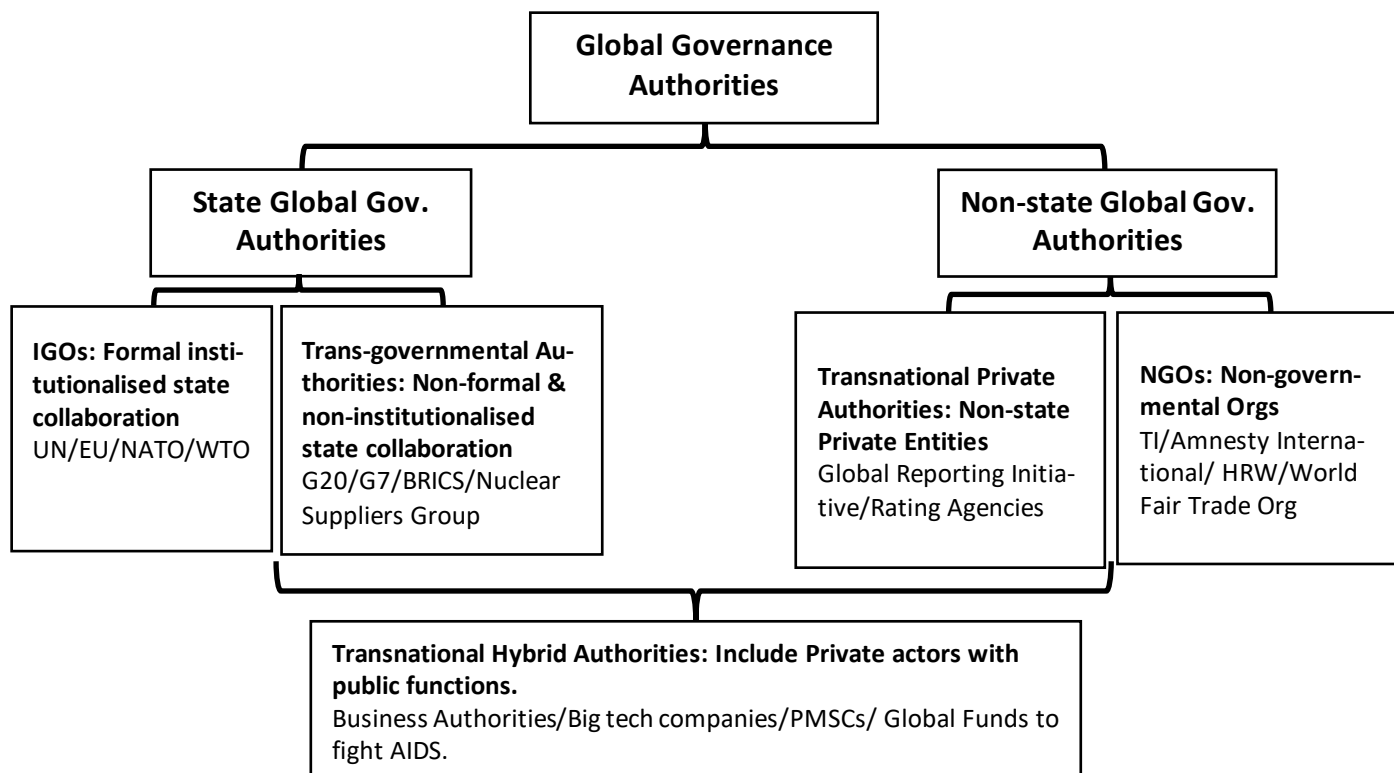


Figure 3: Broad Structure of Global Governance Authorities

Another central conceptualization that needs a brief clarification here is the problem of international authority, which is discussed at length in the following sections (refer to Chapter 4, sections 4.1 & 4.2 for a detailed discussion on the problem of authority). The problem of authority in my study is threefold; first, given the liquid and reflexive characteristics of authority, a difficulty in defining, clearly locating, and measuring authority in an international context in clear distinction to power, force, and persuasion. Because distinctions are often ignored with the assumption that everything can eventually be called anything else as long as they serve the same purpose, obedience – like power, coercion, and persuasion - can sometimes be conflated with authority, because they can also achieve obedience.

A second aspect of the problem of authority refers to authority being confined to state-centric global governance, where authority is exercised and obligations enforced indirectly via the state, strictly in the Westphalian paradigms of protection, regulation, and order.

Third, there is an overwhelming reliance on some fixed and pre-defined conceptual frameworks that have been developed in studying global governance or international authority from a specific standpoint. For instance, realists tend to study the UN Security Council as an institution whereby the great powers balance their competition and conflicts. Institutionalists consider it as a mechanism of cooperation for these powers to collectively manage global affairs, while contractualists see it as a delegated power under the command-and-obedience framework in exchange for a responsibility-to-protect (R2P) service (Cronin and Hurd 2008, p. 4).

These optics and frameworks result in a failure to capture different and multiple authorities, which have developed beyond the fixed and legal structures of authority in our globalized world at a scale that can neither be encompassed with state powers nor can be conveniently classified under the public-private authority divide. Based on this research problem, my study argues that authority's conceptual framework of understanding is problematic.

Why has authority as a concept always been a subject of discussion and controversy? It all dials down to how the 19th century liberal and conservative writers have dealt with the problem of authority. The classical problem of authority arises from the misunderstanding of its underlying condition, which is obedience. 'If violence fulfils the same function as authority – namely makes people obey – then violence is authority' (Arendt 2017, p. 496). It is similar to the argument that was used for religion, that 'whatever fulfils the function of religion is a religion' (Arendt 2017, p. 496). This impression with regard to understanding authority often comes from those scholars who understand authority in a strict command and obedience framework and fail to identify the distinct traits of authority, like David Lake (2009, 2010), who considers coercion as part of authority's functionality. In this sense, then, authority is whatever makes people obey. Here, this argument is made in line with the problem of authority that authority is simply considered as a command-and-obedience relationship. Now, whatever fulfils this function can be termed authority, regardless of distinguishing whether it is coercive, persuasive, or absolute power. As long as we stick to theories like contractual

authority, we just see the obedience function as the hallmark, regardless of whether it is identified as authority, power, tyranny, or persuasion.

It is very important which lens is put on while analysing authority. Is it the nature and function of authority which are taken to determine authority, for say an actor impacting others and their freedom? Or are authority as an entity and its content taken as an understanding of its nature and function in society, for say an actor with legal and delegated authority liable to issue commands and claim obedience? If the latter is the case, where authority as an entity and its content are taken to determine both the nature and function of authority and not vice-versa, then it is no wonder that some, like Hanna Arendt (2017), have assumed that authority in the modern world has disappeared to the vanishing point. Authority as an entity and its content cannot be the basis of identifying authority, at least in modern global governance, because there are multiple authorities at play now, which may from their identity, nature, and content do not at all look like authority in the traditional, or command-and-obedience sense, but they are nonetheless authorities in their function, impact, and significance.

This fact is sufficiently elaborated through the modern global governance case studies of new authorities in the chapters ahead, where one can see that they can be private entities, yet they perform public functions like public authorities. Therefore, my study takes up a two-pronged hypothesis that, first, authorities have changed, developed, and shifted over time. Here, an empirical discussion on pre-modern authorities is useful in proving whether authorities have actually changed in their function, sources, and functionality, eventually making the existing conceptual framework of authority problematic.

Second, as a result of authority being a social fact and subject to historical changes, and due to its liquid and reflexive characteristics, there are now new authorities on the global governance landscape, which do not fall neatly into the traditional two-pole public and private authority constellation and do not work under the command-and-obedience framework. In this sense, authority is not a one-time arrangement as it is in the case of contractual or delegated authorities. It is rather a process, in constantly reflecting on whether an actor is in authority. The reflexive concept of authority, in which authority is not eternally given but is constantly reflected and reviewed, is useful with regard to new authorities in global governance. These new authorities are already in the middle of debate about being authorities or just private actors intervening in the public sphere.

Here, the case studies on the multiplication of authorities and new authorities which are private but with public functions are useful in proving that actually there are new authorities on the horizon in global governance which cannot be made sense of under the existing conceptual framework of authority. The case in point is that if one goes for the face value of authority, which means only looking strictly at what an authority should be as an entity and with its pre-defined content, then we land back at square one – the problem of authority. This would then mean that the conceptual understanding of authority is narrow and problematic and excludes new authorities in modern global governance, which may not look like authority in traditional state-delegated form, but they nonetheless exercise international public authority with the ability to impact others and their freedom. It is this aspect that inspired my study to look at the research question, **what kind of world came to an end after the modern global governance not only challenged one or another form of authority in different spheres of life but also caused the whole traditional concept of authority to lose its relevance and validity altogether, to the point of making the conceptual framework of authority problematic and narrow in comprehending new authorities.**

Those scholars who desire a return to authority, believing that only a reintroduction to the good old traditional and solid, order-obedience authority relationship can resolve the problem of authority as a concept, are committing two mistakes which further complicate and blur the conceptual distinctiveness and meaning. First, they equate violence and other forms of power with authority. Second, by looking only at the end result and disregarding the means through the argument that whatever fulfils the function of authority (obedience) is authority, is a functionalist understanding of authority, which is no different from the narrow contractual understanding of authority. This functional logic of authority is intensively proven to be fruitless, at least in making sense of new authorities, as evident from this study's literature review chapter (Chapter 2).

These can be seen as structural differences, but they become complicated once we go beyond theories and pay attention to the apparatus of rule and governance. Simple on the structural level, the difference between tyranny and authoritarian governance is that the former rules with the power of its own will and interest and the latter, even in its most draconian authoritarian rule, is bound by laws. Therefore, in the face of this research problem, the term 'beyond contractualism' in my study, refers to my fundamental methodology of employing a

broader approach in making sense of these new and different authorities in global governance, which go beyond the state and public-private authority constellations. The rationale and justification for why a broader approach is necessary that goes beyond the boundaries of state and public-private authority is provided with the help of two sets of case studies from modern global governance: first, critically analysing state-centric global governance in the case study of private outer-space companies and in the case study of big tech companies and data capitalism, a governance problem. Second, critically analysing global human rights responsibilities, going beyond the Westphalian paradigm of human rights protection, in the case study of private military security companies (PMSCs).

Since my study focuses on the problematic characteristic of the conceptual framework of authority in the face of multiplication of authorities beyond the state and the public-private divide, with their functions and behaviour implications, so I tend to comparatively focus more on new authorities. They often include non-state actors/authorities, whose exercise of authority can have significant impact across different global policy issues like that of business authorities in the case of human rights and can at the same time take part in global governance responsibilities.

Given my case studies of new authorities in modern global governance and a detailed discussion on pre-modern authorities as the sources of empirical analysis for understanding the shifting nature of authority, I come across the difficulty of actually comparing authority – in the modern global governance concept – with that of empires and institutions like the catholic church and Pope of that time. Therefore, first, in my study's discussion on pre-modern authorities as a semblance of modern-day international authority, I treat the concept of the international authority of global institutions in broader and flexible ways, not strictly in the post-1990s global governance concept of formal-legal delegation of powers.

Second, in my case, if the concept of international authority is to be useful, it should include actors and relationships which possess at least a measure of authority that goes beyond national borders. In such an open definition, I link modern global governance institutions (those that exercise political authority) with ancient and medieval empires like the Roman and Greek and institutions like the Catholic Church and Papacy, whose authority reigned across continents, religions, and cultures.

Thus, the concept of international authority in this study comprises two components: elements of rule going beyond geographical, national, cultural, and religious boundaries; and shared goals in terms of common global good in the case of modern global society and shared norms, values, and religious beliefs or just territorial gains in the case of pre-modern imperial authorities.

At points, I may use the terms 'international' and 'trans-national' interchangeably when referring to authorities in global governance, and it is better to clarify the intent and meaning of these two. A transnational perspective, particularly in my research, refers to the shifting or broadening of analysis beyond state-focused authorities, which comprises both intergovernmental organisations, as in international political authorities like the UN and the IMF, and epistemic authorities, which include both institutionalised epistemic authorities like the IAEA and NGOs such as Transparency International. In fact, by 'transnational' here is meant the interaction and processes (both state and non-state) between and beyond the boundaries of nation-states and the simple public-private divide. The purpose of using the term 'transnational' here is to refer to those organisations and actors (be they intergovernmental or non-state) in global governance that have become more autonomous from states and have the ability to induce deference (Willis 2020).

Another reason for using the two terms together or interchangeably is rightly provided by Oran R. Young (1997); that international organisations and interactions among states on the global level, represent 'state interests', while transnational authorities and their workings in global governance represent 'society's interests'. Since my research goes beyond the Westphalian paradigms of governance and public-private constellations and sets out to cover newly evolved alternative forms of authority in global governance, so the transnational aspect in my study means acknowledging all the new, non-state, and unconventional forms of authorities on the global governance landscape.

## **1.2 Expected Thesis of this Research: Research Questions & Hypotheses**

### **Research Questions:**

**RQ1:** What is the problem of international authority and how is the conceptual framework of authority problematic?

**RQ2:** Do the existing models of authority in governance studies provide empirically grounded resources with which to identify changing authority relations in global governance?

**RQ3:** How to define, locate, test, and measure authority in an international context, in the face of weak and weakly founded claims of its existence?

**RQ4:** How has authority shifted over time and how is it more consequential, not consequential, or different consequential in dealing with transnational issues and how can it be made more accountable?

**RQ5:** Is the exercise of authority in itself sufficient to inspire deference to collectively formulated rules and goals in global governance, thus facilitating desired forms of collective action?

**RQ6:** What kind of world came to an end after the modern global governance not only challenged one or another form of authority in different spheres of life but also caused the whole traditional concept of authority to lose its relevance and validity altogether?

**RQ7:** How are the grounds of legitimation of these new authorities similar to or different from the workings of legitimacy in the nation-state and other forms of authority in global governance, either in the past or in the present?

**RQ8:** Is international authority based on a vertical or horizontal structure of authority, or both?

**RQ9:** In global governance, does the existing human rights framework – states' 'duty to protect' and corporations' 'responsibility to respect' human rights – adequately address the human rights violations and challenges that arise in implementing the human rights responsibilities of multinational companies (MNCs)?

**Hypotheses:**

**H1:** With regard to RQ 1, I hypothesize that there are new authorities on the global governance landscape which are private but perform public-interest functions. They do not fall neatly in the traditional two-pole public-private authority constellation and do not work under the command and obedience framework. Here, the case studies on multiplication of authorities and new authorities which are private but with public functions are useful in showing that, actually, there are new authorities on the horizon in global governance which cannot be made sense of under the existing conceptual framework of authority, which is contractual

and strictly command-and-obedience and state-oriented. This hypothesis is addressed in chapter 4.2.

**H2:** Based on RQs 2 and 3, I hypothesize that the existing models of authority in governance studies are pre-defined, fixed, and state-centric, and result in the failure to fully capture the multitude of authorities, their nature, functions, and grounds of legitimation beyond the Westphalian paradigms of regulation and the public-private divide. This hypothesis is taken up in Chapter 4, section 4.3.

**H3:** Based on RQ 4, I hypothesize that in different international social contexts, authority will appear in different ways; it will be based on different sources; it will create a different relationship between the rulers and the ruled; and it will give shape to different and, sometimes, even to new international structural and institutional arrangements, which will have different behavioural consequences. This hypothesis is taken up in Chapter 4, sections 4.1 and 4.4 of the study.

**H4:** Based on RQ 5, I hypothesize that in international contexts, mere de jure grounds for exercising authority are not sufficient to either gain and sustain legitimation or to inspire deference. This hypothesis is addressed in Chapter 4, section 4.3.

**H5:** Based on RQ6, I hypothesize that authorities have changed, developed, and shifted over time. Here, the empirical discussion on the pre-modern authorities of ancient and medieval times is useful in proving whether authorities have actually changed in their function, sources, and functionality. This hypothesis is taken up in Chapter 4, sections 4.1, 4.6 and 4.8.

**H6:** Based on RQ7, I hypothesize that authority is a social fact, subject to historical changes. Therefore, as events took turn, so did authority and its grounds of legitimation. This hypothesis is addressed in Chapter 4, sections 4.1, 4.6 and 4.7 of the study.

**H7:** Based on RQ8, one further hypothesis with reference to case studies will be tested, under one of my proposed conceptual frameworks - shifting the focus from formal 'delegation' to the 'development' of authority over time. In the modern reflexive conception of authority, it is not a perceived duty to follow international authority, because our present-day international authorities do not exclusively work with 'commands to do X' but also includes 'requests to consider Y' (Zürn 2018). If I also find examples of modern-day soft authorities in my study's



discussion on pre-modern authorities, or if I likewise find modern global governance structures comprising mostly traditional (contractual and solid), exclusively command-and-obedience-oriented authorities, this will falsify my third hypothesis. This hypothesis is addressed in Chapter 4, sections 4.1, 4.4 and 4.5 of the study.

**H8:** With regard to RQ9, I hypothesize that the international human rights regime on a global level is too heavily state-centric, due to which private business authorities neither share global human rights responsibilities nor face any direct legal or normative accountability. This hypothesis is addressed adequately in Chapter 4, section 4.12, a case study of private military security companies PMSCs.

### **1.3 Aims and Objectives:**

My study aims to go beyond the state of the art by employing an empirical-sociological analysis of authority in global governance to a broader array of institutions and audiences, developing an interpretive comparative historical analysis approach and combining questions relating to the nature, sources, functions, and behavioural impact of authorities which go beyond the Westphalian paradigm of governance and regulation.

This study does not aim to list the newly evolved authorities or try to create another constellation of authorities alongside public and private authorities. Rather, it adopts an authority-based approach to focus attention on the changing global governance landscape with the rise of new authorities which have different sources of legitimation and functional characteristics, with an emphasis on how consequential, inconsequential, or different consequential these authorities are. This is because it is generally perceived that non-state private authorities based on non-formal grounds of legitimation are weak.

This study, therefore, aims to add the 'different consequential' variable to the existing equation based on the simple binary distinction of 'consequential' and 'inconsequential' in analysing authorities in the international context. The underlying objective of doing so is to quash this narrow understanding that if an authority is private, then it has no role in the public sphere and cannot perform a public function; or, if it is not solid and not based on legal, formally delegated powers and is devoid of a command-and-obedience arrangement, it is weak and not consequential.

This argument in the study sets the stage for a better understanding of new and multiple authorities in global governance by disaggregating their different consequences or behavioural implications into their empirically meaningful functional components and by devising case studies to study these authorities' significance and different impacts (e.g., international business corporations and their human rights responsibilities). Another fundamental argument of the study that will be addressed through this 'different consequential' aspect is the problematic characteristic of the conceptual framework of authority, which provides a narrow and misleading understanding with regard to new authorities.

The objective of studying authority in global governance structures beyond the state and traditional conceptual frameworks of contractualism and solidity, is to answer the questions: how consequential, inconsequential or different consequential these new authorities are in our present-day global governance structures in dealing with transnational issues; how they can be made sense of in the existing conceptual framework of authority, and how they can be made more accountable and responsible in global governance. In this regard, the study will empirically analyse and compare the historically and sociologically changing forms of authority. The study, grounded in the deference model, is sociologically inspired, for it attempts to study authorities in wide and different settings – beyond the state and the traditional public and private divide (Mende 2020; Friedman 1990; Krisch 2017).

#### **1.4 Significance of the Research:**

My extensive literature review on authority and its legitimacy in global governance suggests that a broader understanding of authority beyond the political and philosophical underpinnings has so far not attracted the level of attention it deserves (as evident from my critical literature review table in Chapter 2). However, there are some recent scholars who have taken a broader understanding of authority (Tallberg et al. 2018; Mende 2020; Agné 2018) on sociological grounds. Joining and furthering this trend, my study also sets out to broaden the conceptual framework of authority by providing an interpretive, comparative, and historical perspective on authority in order to make sense of new and different authorities in global governance. Therefore, this study significantly shows how a broader approach to understanding authority, beyond the Westphalian paradigms, helps in making sense of different forms of authority, their nature, sources of legitimation and functions in global governance.

This study moves beyond earlier research on authority in global governance in some important respects. First, it attempts to provide an understanding of authority beyond the contractual, Westphalian, and command-and-obedience frameworks. Second, in this attempt, it brings into discussion the multiplication of authorities in global governance and their responsibilities across different policy issues, such as international business corporations' human rights responsibilities or outer-space resource exploration and commercialization corporations' responsibilities and accountability.

One of my hypotheses, that authorities in our modern global society have grown beyond the state, and that the study of international authority and its analysis should be likewise carried beyond the Westphalian paradigms of public authorities, sets the stage for a discussion of the multiplication of authorities and their regulation in the face of state-focused global governance.

This study promises four contributions for advancing the research frontier on international authority:

- First, it further develops an empirical approach to the study of authority beyond contractualism. Existing literature has been mostly normative, attending to pre-defined conceptual frameworks in strictly Westphalian paradigms in analysing how global governance authorities conform to certain philosophical standards, such as justice, democracy, and fairness.
- Second, this study joins recent efforts at understanding authority on broader lines beyond the traditional focus on states as the principal audience by initiating a critical discussion of the ways that global governance research is state-centric, and by bringing into discussion the multiplication of authorities and their increasing role in global governance.
- Third, I make use of a process tracing analysis and an interpretive comparative historical analysis methods to bring to light the development of authority over time, rather than only a delegated aspect of authority in global governance. Therefore, my study uses case studies from ancient, medieval, and modern global societies. Most of the existing empirical research on authority in global governance has relied on single-case studies, either from pre-modern authorities or from modern global

governance. I combine the two in a two-pronged hypothesis to create solid grounds of argumentation that the conceptual framework of authority is problematic.

- Fourth, my study provides the most comprehensive account of the sociological-empirical understanding of authority in global governance. Most of the existing scholarship (no doubt very insightful and useful) has focused on specific aspects of authority in global governance; i.e., functionalist and legalist understandings of authority (Lake 2010; Orford 2011; Waltz 1986) or authority delegation in global governance (Hooghe and Marks 2015). However, my study provides a broader understanding of authority relations on sociological-empirical grounds, encompassing the following five major analytical themes in research on international authority in the face of multiplying authorities: 1) the changing and shifting nature of authority in global governance, resulting in new authorities; 2) the problematic conceptual framework of authority; 3) the reflexive characteristics of authority in global governance, based on constant cycles of legitimation, de-legitimation, and re-legitimation; 4) the differing functional aspects of authorities in global governance beyond the command-and-obedience framework; 5) the differing problem-solving effectiveness of authorities in dealing with transnational problems, measured by a 'different consequential' variable in my study.

In realizing these contributions, my study adopts an interpretive comparative historical analysis method to the study of authority beyond contractualism. The conceptual distinctions, the theoretical conjectures, and the methodological strategies laid out in this study (refer to the methodology chapter) are guided by the study's design and objectives, which serve the goal of providing a better empirical assessment and understanding of authority in global governance on the specific lines elaborated above.

## Chapter 2: Literature Review

I begin the discussion of the problem of authority with an extensive survey of the established literature on authority in the discipline of global governance studies. I review attempts at conceptually defining, and clearly locating the increasingly dynamic and non-unitary authority structures and analysing the problem of authority beyond the state, as well as some pre-defined conceptual frameworks in the discipline of IR and political science. To this end, some literature review objectives are set. The first is to position the identified research problem in my study relative to existing knowledge and literature. The second objective is to gain detailed and critical insights into the research methods and approaches other scholars have used to study authority, its legitimacy, and functions in global governance. The third is to look for innovative and broader approaches applied by scholars in the field with regard to the problem of authority and new authorities. To accord each aspect of the research topic a detailed focus, this study divides the literature review into the following thematic clusters.

### 2.1 Literature on the Concept of International Authority:

The concept of international authority is a central reference point in a discussion on sovereignty, on the rise of inter- and transnational actors, on the legitimacy of international institutions, and on the use of power and coercion in inter-state affairs. Traditionally, before the emergence of global governance structures in the post-World War II era, the absence of authority and hierarchy, defined as anarchy, used to describe global governance (Hurd 2002, 2007).

The idea of anarchy as the absence of authority, state or orderly structures is driven from the concept of a 'state of nature', developed by the 17<sup>th</sup> century philosopher Thomas Hobbes in *Leviathan* (Curley 1994). The state of nature is a hypothetical condition of statelessness. It can be read in two ways: either *retrospectively*, as a condition of what human life would be like if the existing authorities were to vanish; or *prospectively*, as a condition in which authority or governance structure in the form of state or global governance would be created for the first time. The prospective view of anarchy is the standard one within IR.

Uniquely among classical contractarians, such as John Locke and Jean-Jacques Rousseau, Hobbes alone envisages a parallel between the domestic state of nature (among human beings) and the international state of nature (among sovereign states). Hobbes's international

state of nature is the closest analogue of international anarchy in contemporary terms. The concept of international anarchy is propagated with reference to international authority and global governance in three of the major IR theories (a) realism and neorealism; (b) the international society approach, sometimes termed the 'English School' of international relations; and (c) Kant's republican peace. These theories attach different analytical and normative significance to international anarchy, but they all build upon a common puzzle about the state of nature, which Hobbes formulated thus: What happens when multiple actors are locked into a common interaction domain in the absence of authority (Lechner 2017).

Authority was always, and is still, treated as the 'quiet' or the other half of anarchy in the realist perspective (Leipold 2015; Cronin and Hurd 2008, p. 24). In fact, international authority in this sense is believed to have taken birth from the cradle of anarchy, with close reference to the emergence of post WWII global governance structures.

Then, power-delegation provided a formalist view of authority, where the authority of an international institution was simply considered to lie in tasks that states would delegate to them – ruling out the possibility of international authority over or beyond states. It is only recently that authority as an independent and stand-alone concept has been brought into systematic theoretical engagements to study how hegemonic powers, international institutions like the United Nations Security Council (UNSC) and epistemic authorities, both institutionalised and NGO-based with regulatory and advocacy functions, exercise authority and how their addressees respond to their claims of authority. What changed with this turn to authority is not the meaning of authority, but rather the way we think about global governance.

This turn to authority represents both that there is an empirical shift – with more institutions and actors claiming authority over states and society – and a theoretical shift – where including international authority in the research framework allows researchers to look at global governance problems from the perspective of authority. The reconceptualizing of global governance in authority has led us to think of global rule and arrangements in empirical and normative terms. However, though some scholars (Arendt 1977, 2017; Lake 2010; Bogdandy et al. 2008) now apply authority to global governance or transnational issues, they make use of partly incompatible concepts of authority, particularly on how it is established in an international context, how to make sense of authority beyond the state, and how it relates to legitimacy (Peters and Schaffer 2013).

We must be clear about what is meant by authority; both in general and specific to global governance, but this is not that easy; first, many scholars in different contexts and under different frameworks define it differently. Second, with authorities having changed and developed over time, there are now different forms of authority, at least in global governance.

Although authority is a central concept in the study of human society, there is no fixed definition of what international authority is. There are many different explanations of the concept. In this regard, Richard Friedman (1990, p. 57) said that authority 'has proved to be an elusive concept, as well as an indispensable one'. Likewise, Hannah Arendt (2017) in her famous write up on 'What was Authority', argued that authority had vanished from the modern world, and that by the twentieth century, it was almost impossible to have genuine experience of what authority is, or rather *was*.

Despite the fact that authority has received less attention in the study of IR and global governance theories, it has always been present as the silent half of the anarchy-authority link. Though anarchy has always received most of the attention, it has nonetheless been used in permanent contrast with authority in order to make sense of it. Due to the centrality of the anarchy hypothesis in IR, neorealism and neoliberalism concluded on the basis of this assumption that authority did not exist among states but only within them (Cronin and Hurd 2008). The anarchy thesis has been useful to IR theory, yet its basis in the absence of authority remains intellectually unsatisfying.

The second consideration around the concept of international authority is clearly locating international authority and measuring its legitimacy. For that again, many scholars have come up with different schemes. Starting with the most common and easily identifiable, Arendt follows the conventional understanding of the authority relation between the one who commands and the one who obeys (Arendt 1977). What is significant and common between the two is the hierarchy, whose rightness and legitimacy both recognise (Barnett and Finnemore 2004). In other words, the three most fundamental elements found in the conception of authority are first, a superordinate and subordinate relationship; second, recognised by both; as, third, legitimate. Such an understanding of the concept of authority makes a authority distinct from coercion, persuasion, and interest-based or cost-and-benefit power relations (Cronin and Hurd 2008).

The third scholarly divergence occurs on the question of the legitimation of authority. For instance, Weber analysed three sources of authority; tradition, charisma, and law, by which authority might be legitimised (Weber 1978). Most recently, scholars like (Zürn 2018), argued that transparency plus one or more than one social purpose grants authority legitimacy. Friedman (1990) and Raz (2006), elaborating on the legitimacy question, provided a distinction between theoretical and practical authorities; a person who is 'in authority' and the person who is 'an authority'. The former derives their legitimacy from their position with a right to issue commands and the latter from their knowledge and expertise.

Andrei Marmor's (2011) institutional concept of authority provides a detailed account on what is meant by practical authority and what makes it legitimate. His main argument or hypothesis in this regard is that 'what it takes to have practical authority is determined by some social or institutional practice' and what makes authority legitimate depends on the 'nature of social practice or institution in which it operates' (Marmor 2011, p. 1). Social practice here refers to any human activity governed by rules or conventions, often by social norms which are either conventional, institutional or codified. Institutional practice is a rule-governed practice with two distinct features: an established mechanism for change and a mechanism for monitoring compliance and responding legally to non-compliance.

Marmor believes that practical authorities typically operate in institutional practice, rather than social, because practical authorities are based on systemic powers, which come from power-conferring norms like rules and conventions (Marmor 2011, p. 11).

To have authority is to have normative power of some kind. Normative powers refer to some power-conferring rules and conventions, therefore also known as power-conferring norms. These power-conferring norms thus turn out to be institutional in nature, for they form the basis of social practice or institution (Marmor 2011, p. 4).

However, his understanding of authority based on power-conferring norms is insufficient and very general. Some authorities are probably systemic in the sense defined here: in my understanding, most international political authorities, like the UN and IMF, are systemic powers and practical legitimacy for their authority is granted by 'power-conferring norms', rules, and conventions. Yet, others may not be as systemic and legal as the rest, but they are nonetheless authorities; this could apply to private authorities, most of the NGO-based epistemic



authorities,<sup>3</sup> and even some of the institutionalised epistemic authorities, which either may lack a power-conferring norms characteristic or lack the ability to respond to non-compliance themselves.

Second, his method of defining and locating authority based only on power-conferring norms in a systemic way is again very narrow and misleading. For instance, he argues, if one wants to know the powers of the American president, one should look at the US constitution (Marmor 2011, p. 10). Despite his attempt to provide an institutional and empirical approach to authority, he winds up at the same old theoretical, philosophical, and legal normative framework of authority. By explaining authority from a quasi-juridical perspective, he loses a distinction between power and authority.

Then there is Raz's (2006) service conception of authority, where authority is considered legitimate when it enables people to conform better to reason. In all these differences, a barely common point of agreement in some of the scholarship is provided by the belief that authority as a legitimated power implies a very distinct relationship between the ruler and the ruled. This is distinguished from coercion and persuasion because to coerce, or even to reason with, a subordinate indicates the absence of authority. Arendt (1970), rightly pointed out that when force or coercion is employed, it means authority has failed; it is believed that the logic of the authority relation makes reasoning unnecessary. Likewise, Cronin and Hurd (2008) argue that an authority is followed without thinking; it is a product of socialization, not of consent. Here, authority comes close to the deference model.

Ian Hurd (2008), defines authority as a relation among actors within a hierarchy in which one group is recognised as having both the right and the competence to make binding decisions for the rest of the community. Most scholars at least agree that authority should be defined in contradiction to coercion and persuasion. Hall et al. (2002) differentiate authority from power and coercion by arguing that legitimacy establishes the claims of authority. On authority and its legitimation, Zürn's (2018), explanation that authority's legitimacy is a combination of transparency and one or more than one social purpose, is similar to John Ruggie's

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<sup>3</sup> Epistemic authorities are expert knowledge-based authorities (both state-delegated institutionalised & NGO-based). They are not exclusively command-based authorities but rather employ interpretation, advice, suggestion, and with direct or indirect behavioural consequences. For more detailed understanding of epistemic authorities, refer to section 2.6 of this chapter.

definition, 'authority is a fusion of power and legitimate social purpose' (Ruggie 1982, p. 382). Hence, it is legitimacy that differentiates authority from other forms of power, and then it is social purpose that enables authority to achieve recognition and legitimacy in a community.

Ian Hurd (2008) considers authority on sociological grounds, where social relation or a hierarchical relation in global governance is recognised as legitimate. He recognises legitimacy as a significant characteristic of authority, and he is right in contrasting legitimacy with coercion and self-interest in broadly differentiating authority from other power structures.

All the three reasons - coercion, self-interest, and legitimacy - for accepting authority and rules exist in different combination in different social contexts. First, coercion, based on an asymmetrical power relation, is a tool to condition the behaviour of the weaker agent, where the fear of punishment induces obedience. Ian Hurd (2008) is right in arguing that coercion is an unsustainable model, because the dependence on coercion engenders huge resources for enforcement and surveillance, and since those who depend on coercion cannot acquire voluntary deference, they either tend to collapse or establish stricter mechanisms of control.

Second, self-interest is likewise an unsustainable and unreliable model, based on the calculation of the net benefits of compliance versus non-compliance. Here, the subjects follow rules as long as they support their own self-interests. Therefore, a long-term relation on such volatile grounds would be hard to maintain because actors do not value the relationship itself.

Third, legitimacy so far seems to be a reliable and most principled reason of deference to authority, but it is not enough in modern global governance. Therefore, Ruggie (1982) and Zürn (2018) have rightly conditioned legitimacy with social purpose as grounds for deference to authority.

Since it is clear that a definitive explanation of authority in its true nature or essence is impossible, and looking at the concept of authority under predefined and fixed paradigms is even more misleading and problematic, then I propose to stick to a sociological understanding of authority as a social relation, where the social purpose, legitimation narratives, transparency, and effectiveness of an international organisation determine the legitimacy of its authority. Though Ian Hurd (2008, p. 25), has also taken the sociological approach to the concept of authority and has argued that 'authority is a legitimated power', to avoid any confusion of

authority with power, I stick to authority as a legitimated social relation, which exists in many ways and on different levels.

In Global Governance, international authority, which includes both international political authorities and epistemic authorities, is considered a social relation between actors and structures by many scholars (Cronin and Hurd 2008; Zürn 2018; Krisch 2017; Furedi 2013; Lake 2010). It is an interplay between actors and structures on different levels; between two states or sets of states, as between great powers and other states, between states and rules of international law, and between states and the formal international organisations, as between the UN Security Council and its member states.

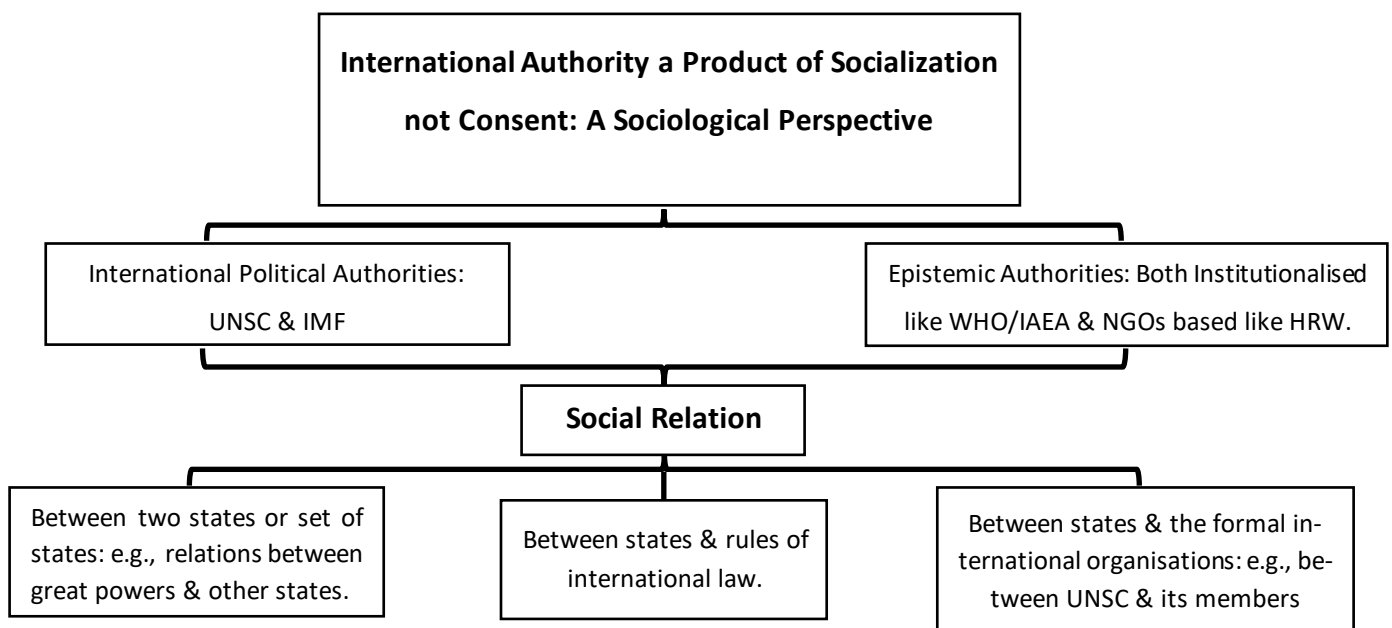


Figure 4: Relational Concept of Authority: A Product of Socialization

Authority in this sense is a social relation that exists basically between actors and the structures that make up a social setting together. It exists when actors believe that these structures embody legitimated power. To understand the functions and effects of possible relations of authority between states and international organisations, we need to observe both how states are affected by the existence of legitimated structures and how these international organisations – which make up the legitimated structure of global governance – are affected by the behaviour of states (Hurd 2008).

Inspired by one of the major goals of conceptual thought on authority – which is to identify relations of authority and distinguish them from other forms – Ian Hurd in *Theories and Tests*

*of International Authority* (2008), sets out to find whether a particular relation of power counts as a manifestation of authority or something else. From this position, he goes further to investigate the existence and effects of authority among international organisations. In his inquiry on these lines, he raises very pertinent questions: Do the existing models of authority in governance studies provide empirically grounded resources with which to identify changing authority relations in global governance and separate the effects of authority from other kinds of influence? Does the UN Security Council exercise international political authority? However, he particularly tries to examine the concept of international authority in the case of the UN Security Council, with an interest in locating and measuring it. Yet, in general, his study on these lines is useful to my study in developing an understanding of international authority, its nature, sources, and functions on one hand and, on the other hand, in examining predefined and fixed conceptual frameworks and the changing relation of authority in global governance beyond the state (Friedman 1990).

Having defined authority as a recognised and legitimized social relation, my study looks for authority relations in global governance by looking at the claims that have been made about the existence of international authority. As explained above, international authority in my study is taken in its sociological context rather than purely on legal grounds. This approach is less common than the dominant legalist, contractualist, and other IR theories in the global governance literature. This methodological distinction is necessary for devising an empirical analysis of international authority.

The legalist understanding of authority is grounded in the legal powers and structures that sanction the organisation or authority. This approach, for instance, views the UN Security Council's authority as delegated by the member states under the Charter through the act of consent (Hurd 2008). This approach, though relevant, strips authority of its true essence and confines it in two ways; first, it defines only the authority of inter-governmental organisations (IGOs) strictly in a legal context, limiting its functions and nature to the treaty from which it took birth. Thus, it excludes new and multiple authorities which do not fall neatly into the public and private authority constellation. It denies authority's relational aspect and cannot explain the changes and developments in the nature and functions of authority over time. Second, it treats authority as a commodity, tradeable among actors on the basis of agreed terms to both sides (Hurd 2008). The existence of international authority in this form is

undeniable: states accept the international law as a source of binding and legitimate authority and they defer to it, in theory, because of their choice of consenting to some aspects and rejecting others. The legalist paradigm delivered a serious blow to the concept of international authority, when 20th century international thought used a legalist understanding of authority to rule out the presence of authority in international affairs. Neoliberals and neorealists, on this basis, argued that authority existed only within the nation state. Similarly, Kenneth Waltz (1986, p. 111) argued, 'National politics is the realm of authority, while international politics is the realm of power of struggle'. David Laitin (1998), clearly rejected the relational aspect of authority by saying that international relations/global governance is a realm of exchanges between states rather than relations of authority.

Some new scholarship in the area of global governance and IR (Zürn 2018; Krisch 2017, 2010; Furedi 2013; Cronin and Hurd 2008; Todorov 2010) has already begun to challenge this neat classification of domestic/national politics tied to authority and international politics as a realm of power and anarchy. This trend has already laid a path towards a sociological study of authority beyond contractualism and legalist models.

However, this approach in the new literature is based on epistemic considerations, empirical analysis and observations of authority's behavioural consequences, rather than tests. For example, the international governance of any specific territory through the UN is legitimate and therefore authoritative. Similarly, on empirical grounds, the expansion and growth of UN peace operations, which include direct UN governance in post-conflict regions during transition periods, is usually presented as the UN's authority over state and society (Cronin and Hurd 2008).

The second cluster of new literature that attempts to establish the presence of authority in an international context, is that of international political economy (Hurd 2008). The international organisations that regulate the international political economy, like the IMF and the World Bank, exhibit a capacity for rulemaking and authority that is independent of state power. These organisations and some institutionalised epistemic authorities, like IAEA and WHO exercise authority in the international political economy by virtue of their expert knowledge and the gathering and selling of information. Though they can be termed international political authorities, given their capacity for rulemaking and change, for our study, like

Zürn (2018), we classify them as institutionalised epistemic authorities in the analysis of different authority functions and their sources of legitimacy.

However, one way or the other, these authorities cross two conventional boundaries – one, between private and public; two, between the domestic and the international (Cronin and Hurd 2008). In this context, the question that remains unanswered is which set of authorities/organisations in global governance are based on the vertical distribution of authority and which are horizontal. Roughly speaking, international political authorities appear to be based on a vertical distribution of authority, whereas epistemic authorities are on the horizontal. Still, we need to get clear on the question of whether international authority in general requires this vertical dimension.

Some explanation is provided by Hurd (2008), in the example of the UN Security Council towards the question of the vertical dimension of authority relations. If the UN Security Council is considered by states as the sanctioning and determining authority on the question of appropriate and legal use of force, then a vertical relation of authority can be theoretically established from the International Organisations (IOs) down to states, at least in the case of international political authorities. For empirical proof of the fact, the behaviour of states towards the UN Security Council in the episode of the invasion of Iraq in 2003 is useful in analysing the vertical authority relation. In the event, some U.S allied states said they could and would support America in the Iraq invasion only on the condition that it was first approved by the UN Security Council, and the U.S., too, relentlessly approached the Council to gain endorsement. Kofi Annan, in 2002, reiterated that when the states decide to use force, there is no way around the legitimacy requirement from the UN Security Council. Based on this, if such deference to the UN Security Council is widely shared, it would establish the fact that the UN Security Council has a vertical relation of authority over the nation-states in deciding upon the use of international force.

Among the available literature on global governance, few extensive studies have yet been carried out of the institutionalization of international authority beyond the Westphalian paradigms of human rights protection, direct regulation of private and business actors, and legal obligations, the exceptions being those of Mende (2020), Clapham (2006), Deva and Bilchitz (2013), and Tallberg et al. (2018). Rather, most approaches and studies predominantly study global governance as the management and coordination of global politics, without going

beyond the state and interstate relationship (Cronin and Hurd 2008). Some theorists, like Arndt (2017), even agree that in an anarchic system based on the principle of sovereignty, authority lies exclusively within the nation-state; therefore, she argues that authority has vanished from modern global governance. However, at the same time, some scholarly works (including my study) have started challenging the argument of global governance as an authority-free zone (Cronin and Hurd 2008; Peters and Schaffer 2013; Todorov 2010), which necessitates different empirical and conceptual approaches for new research in this area.

## **2.2 Testing for authority: The Problem of International Authority Scholarship**

Joseph Raz's (2006) *Problem of Authority*, Lukes' (1990) *Perspectives on Authority* and Ian Hurd's (2008) account of the *Theories and Tests of International Authority* are very significant to our study in highlighting the problem of international authority, which is threefold. First, there is difficulty in defining, clearly locating, and measuring authority in international contexts in clear contradistinction to power, force, and persuasion. A second difficulty is the limitation to a state-centric view of global governance, where authority is exercised and obligations enforced indirectly via states, strictly in the Westphalian paradigms of protection, regulation, and order. Third, there is an overwhelming reliance on different pre-defined conceptual frameworks that have been developed in studying global governance/authority. For instance, realists study through the framework of hegemony, institutionalists via the cooperation model, English school theorists from a common rules and regulations perspective, and constructivists through the constructive rules model. In all this, therefore, a wider concept of authority and its relationship with power politics is rarely developed (Hurd 2008).

Joseph Raz's account on the problem of authority is of particularly great relevance to my study because his primary research question also revolves around the problem of authority, as it does in my study. My study partially shares his meaning and scope of the problem, which according to him is twofold; theoretical, referring to the misunderstanding of the concept of authority and moral, referring to a more general concern of how to justify people subjugating their will to that of another or to the normative demand to do so (2006, p. 1008).

However, his service conception approach of authority enabling others to conform better to reason, presented as a solution to the problem of authority, brings the whole authority debate back to a functionalist framework of authority, which neither serves the needs of the

current research nor my study's purpose of making sense of the nature, functions, and grounds for legitimation of the newly developed alternative forms of authority structures in global governance; his service conception, explaining who actually possesses authority, refers to authority's legitimacy being reliant on its function of enabling subjects to better conform to reason (Raz 2006). It explains how and when an authority can be justified in the sense of being for the good of its subjects.

It is similar to Orford's (2011, p. 42) approach of looking at the UN Security Council's authority based on the principle of 'Responsibility to Protect, R2P', under which the UN not only exercises its authority but also claims legitimacy and deference for providing protection. It is in this sense that Raz's service conception approach is confined to a contractual framework of authority, where people's will is subjugated to the will of an authority in exchange for services/functions like protection and welfare; in Raz's case, this function equates to enabling subjects to conform to reason and excluding conflicting or diverting reasons. Though his account also falls in the cluster of contractual and command-oriented authority scholarship, showing no signs of innovation or shift in the conceptual framework, his specific take on the problem of authority provokes a debate on some insightful aspects, such as misunderstanding of the authority concept, the theoretical and practical authority debate of 'to be authority and to have authority' (Raz 2006, p. 1006), shifting concepts of authority, and legitimacy narratives. These aspects, on one hand, make it a useful account for analysing the problem of international authority. On the other hand, Raz's attempt to look at the problem of authority from the same old functionalist model of contractualism, which he calls the service conception, further establishes the significance of my study's argument that the conceptual framework for studying authority or international authority has to shift with changing authority structures.

Joseph Raz's service conception of authority falls into the functionalist approach to authority, where providing some service is taken as a reason for authority to be considered legitimate. In this sense, his conception comes closer to Lake's social contract theory, where authority is an exchange of services (like a political order) for compliance and obedience in return. His conception of authority does not differentiate between authority and legitimacy. Raz (2006) argues that political authorities (in our case international authorities) fulfil three



requirements of the service conception; they offer epistemic expertise, provide a coordination mechanism, and provide reasons for compliance with law and authority.

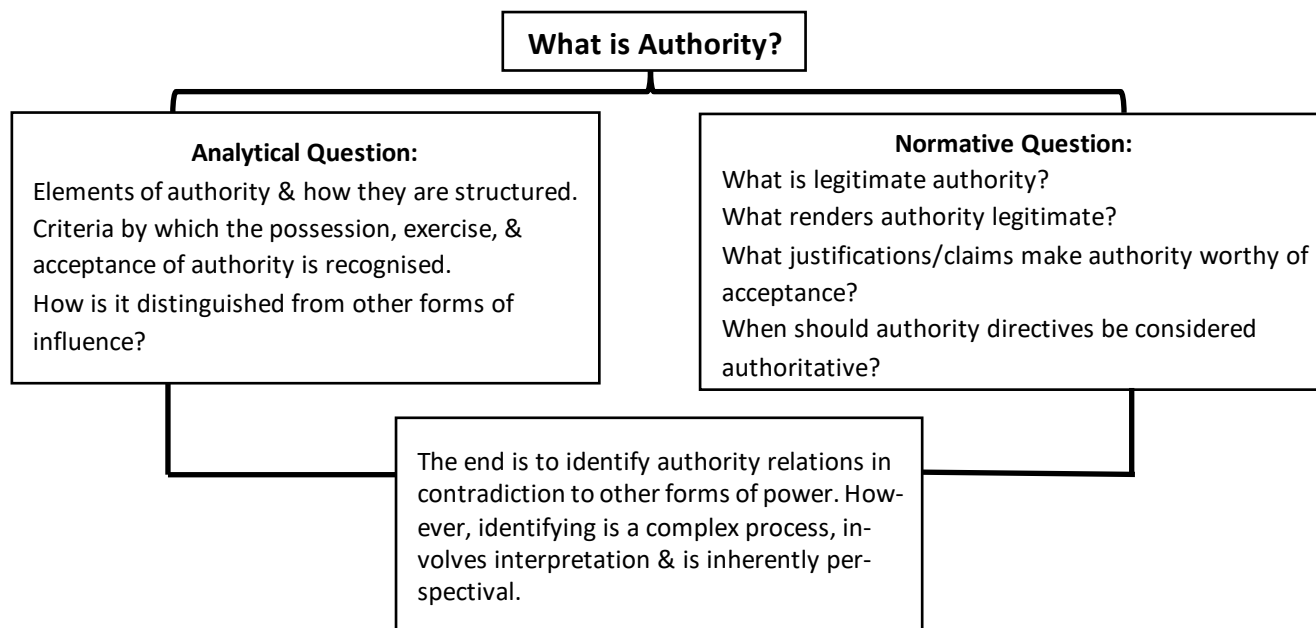
However, this is not an encompassing criterion for describing legitimate authority and is, indeed, questionable, because the service conception assumes that authority is accepted as binding, a condition which is difficult to prove in our present-day global governance authority structures. First, neither the acceptance nor the bindingness of international directives/rules is a *sine qua non* criterion for deciding if any particular institution has authority or not. Second, non-governmental epistemic authorities are more often non-binding in nature, but nevertheless, highly consequential, which in our study we refer to as 'different consequential'. Furthermore, criteria like epistemic expertise and coordination are commonly expected of authority, but they are not sufficient criteria for gauging the legitimacy of international authorities (Peters and Schaffer 2013).

Finally, Raz's service conception combines the concepts of authority and legitimacy, which can make the task of assessing if an institution has exercised illegitimate authority more difficult. For instance, the sanctions of the UNSC or the NATO operation in Kosovo may indicate that the exercise of international authority may be legal but illegitimate (Peters and Schaffer 2013). Therefore, theorizing or conceptualizing international authority must be grounded in normative principles of legitimation and must take into account behavioural implications when authorities fall short of such normative principles.

The service conception of authority describes conditions under which authorities are good enough authorities, which are set up to maximize the social welfare of people. It seems to be more focused on the nature of a successful or good authority, rather than on what it means to have authority. It describes the conditions that evaluate if an authority can successfully execute its tasks. But to assume that anyone who can perform the task well can have authority is wishful thinking; not everyone who can be a good prime minister is a prime minister; there are other factors that give them the task or that can make it their task (Raz 2006). Not everyone who can be a good authority has practical authority.

Lukes' (1990, p. 205) *Perspectives on Authority* is also useful in analysing the problem of international authority, because he also looks directly into the question of 'what is authority?' from both analytical and normative perspectives. Both approaches set out to identify the

relations of authority and distinguish them from others. However, identifying is a complex process, which involves a lot of interpretation and is relative to one or more perspectives. Therefore, Lukes, argues that the authority relation is perspectival (see the figure below).



*Figure 5: Identifying Authority: a Complex Process*

The classification of perspectives may not be entirely useful in analysing the problem of authority or, by extension, international authority, but it is surely helpful in understanding and categorizing different approaches taken by scholars in the study of authority and global governance. My study intends to use the relative perspectives scheme in the literature review chapter for labelling the different approaches taken to understanding the nature and functions of authority. This can be seen in the table on the reviewed state-of-the-art literature at the end of this chapter.

Lukes (1990) classifies these different perspectives on the nature of the authority relation in the following manner. The first perspective on the authority relation comes from the differentiation between the ruler and the ruled, or the one who holds authority and the one who accepts and obeys it, labelled as 'perspective A' and 'perspective B'. Then comes the observer, who may not even be subject to the authority relation or part of the society where it happens: this is labelled as 'perspective C'. Since authority relations are spread across a wider framework of social norms, conventions and legal or customary rules, and they are officially and precisely interpreted by judges, courts, and representatives of the state, so there is often a

legalist or society's official perspective, labelled as 'perspective SO'. However, in the case of unofficial understanding and informal understandings of these norms, rules, and conventions, it is labelled as 'perspective SU'. The consensual social perspective is labelled as 'perspective SC'. Lastly, the conception of the world of the authority relation is labelled as 'perspective O' (Lukes 1990, p. 205).

To analyse the authority relation under these perspectives and find out which perspective or combination of perspectives is provided by different scholarship, we can critically take on some accounts of authority. For instance, Max Weber no doubt focused on Herrschaft, or domination, but was more interested in the 'authoritarian power of command' (Lukes 1990, p. 206). Domination in Weber's belief was the way of attaining compliance. Perhaps, that is the reason that Weber's sociology of domination failed to answer the question, when and why do men obey? Or he failed to look at authority relations from below – from the subject's perspective, 'perspective B', because he looked at authority exclusively from 'perspective A' – exploring the rationale for obedience in command. It seems just as if Weber was also influenced by Marx's dictum that the 'prevailing ideas in any society are the ideas of its ruling class' (Lukes 1990, p. 207). Weber's approach, though it offers great understanding of authority relations, is exclusively from perspective A, which secures compliance by command.

In contrast, Richard Friedman's (1990) analysis of the authority relation covering both aspects, the surrender of private judgement and the recognition and acceptance of the criteria for who should possess authority, indicates a shared or mutual recognition of entitlement. Perspectives A and B mutually agree in a certain kind of recognition that the person to whom one defers is entitled to this sort of submission.

Richard B. Friedman (1990, p. 56), in his essay *The Concept of Authority*, discusses in detail the problem of authority, to which he specifically refers as the 'controversial meaning of authority'. He focuses more on defining, classifying, and locating political authority, due to which he goes to the trouble of indicating the problematic/controversial character of authority, which he believes arises from three major discourses on authority: refer to the figure below.

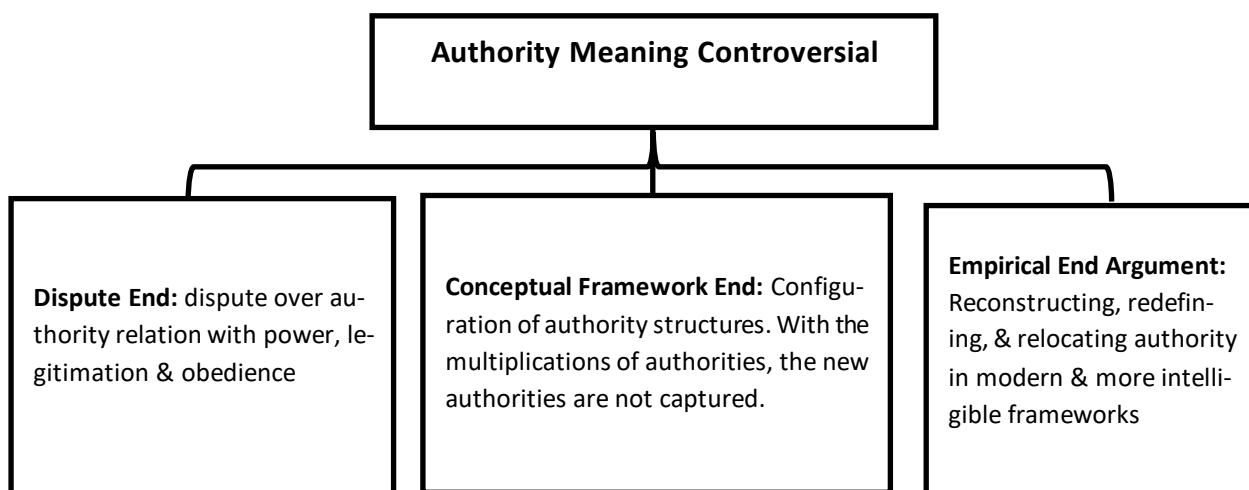


Figure 6: Authority Meaning Controversial

It is this controversial aspect of authority that is taken in my study. Friedman is right in believing that authority is an elusive concept but at the same time an indispensable one. There may not be a single definitive and agreed upon concept of authority that can be employed as a model for understanding all the different functions and ends to which it is put. Therefore, for analysing the problem of authority ahead, I attempt to survey the different views of authority here in the literature review chapter in order to identify the main elements of the concept of authority beyond contractualism.

William E. Connolly (1987, p. 9) in his paper on Modern Authority and Ambiguity also indirectly touched upon the problem of authority, which he called 'the issue of authority'. In his understanding, the problem or the issue of authority arises from the modern discourse about authority, which attempts to avoid the dangers and unknowns that come with authority. It is like when (Raz 2006) focuses on good and successful authorities, rather than what authority is. The problem again seems to be a conceptual understanding of authority. Instead of focusing on understanding what authority is, the sources of its legitimation, functions, and behavioural implications, some of the authority literature goes on 'project fix', where one constellation of theorists tries to overcome this problem of ambiguity by replacing or supplanting authority with coordination. Another group of theorists accept the significance of authority but tie it with the consent of citizens, who commit to abiding by laws and regulations introduced and enforced through acceptable procedures. Although consent is indispensable to the modern practice of authority, consent when provided applies not to specific procedures for enforcing order but rather to a broad and larger set of ends and purposes in establishing a

political order. Hence, not every authoritative action can be assumed to have the consent, other than the general consent that is stretched over the wide array of authoritative actions. Second, the discourse on consent is too abstract to ascertain if specific consent is attained voluntarily or through coercive means. Another set of scholars, like Arendt (2017), believe that with the loss of preconditions for traditional authority or social telos, modernity and authority are incompatible.

William E. Connolly might be right in arguing that modern authority is future-oriented and is more respectful to human dignity than previous authorities. But his argument that 'the mode of authority appropriate to modernity must be appreciative of its ambiguous character' (Connolly 1987, p. 10) is wrong and goes against our understanding of the problem of international authority, which is to clearly locate and measure authority in clear contradistinction to power, persuasion and coercion. To understand modern authority (a mode of authority appropriate to modernity) as argued by Krisch (2017), Zürn (2018) and Black (2017), one must rather go beyond formal-legal and solid authorities and be appreciative of the liquid and reflexive characteristics of authority.<sup>4</sup> Authority as a social fact and subject to historical changes is better served by liquid and reflexive conceptual frameworks, rather than the element of ambiguity that arises in the problem of authority when it is conflated with other forms of power. However, it would not be wrong to argue that, while analysing the nature and functions of international authority, one must keep an eye on the possible biased exercise of authority, which could be termed an ambiguous character of authority.

Terence Ball's (Ball 1987, p.39) account also discusses the problematic character of authority from a purely conceptual framework perspective. He was focused on how authority has been understood in different ways, when embedded in different conceptual schemes. He reconstructs authority in two opposite conceptual frameworks: the emotivist understanding – an ought-to-obey approach, which provides a functionalist understanding of authority, and an epistemocratic understanding – a specialised-knowledge-based authority claim which

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<sup>4</sup> Liquid authority refers to authority's high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and to control in global governance. It tends to undergo changes and acts strong in some issues and weak in others. Under a liquid conception, authority is understood in the sense that it flows, does not have a fixed shape and is difficult to explain under some predefined frameworks and within the two-pole public-private authority constellation. The reflexive concept of authority (Zürn 2018) refers to authorities which are marked by a constant legitimation cycle, and which do not draw their legitimacy from traditional sources like the right to rule or any other contractual or de jure arrangements.

provides a rationalist understanding of authority. The functionalist conception of authority is explicitly emotivist. There is no question of his understanding of the problem of authority; he rightly pointed towards the conceptual framework in addressing the problematic character of authority. On the problem of authority, he argued that concepts make possible a kind of communication and therefore, particular kinds of communities are characteristically embedded in conceptual schemes, frameworks, or theories from which they derive their place, meaning, and function. When a scheme is overthrown, outgrown, or otherwise discredited, concepts like authority lose their meaning and relevance (Ball 1987, p.40). Therefore, authority or any other concept, in this way becomes problematic, and thus philosophically interesting when its basic grounds of communication are questioned and criticized.

However, Terence Ball's approach to deal with the problem of authority and his attempt to reconstruct authority in an epistemic framework are weak and based on some ill-conceived predictions of how political authority will be misunderstood in the attempt at redefining authority, if epistemic authority (being an authority/to be an authority) is used as a model or framework for analysing political authority (being in authority/to have authority) (Ball 1987). There are three reasons for Terence going off the track: a premature and incomplete idea of epistemic authorities; presenting functionalization of authority as an attempt to conflate authority with power, coercion, and violence to gain obedience; and lastly, influence from Hannah Arendt, who went as far as believing authority has vanished from the modern world. Terence pays undue attention to three features of Arendt's analysis.

- Reconstructing authority in the conceptual framework in which authority originally functioned.
- Presenting authority as a phenomenon of the past. Concepts, in this case 'authority', have histories, and therefore, she spoke of authority in the past tense by asking 'what was authority' (Arendt 2017) in one of her essays, which is correct only and if it is seen from the perspective of how authority has changed and developed over time. How authority *was* is obviously different from how authority *is* today (at least in the international context), but she takes it from the perspective of how authority has vanished from the modern world (Ball 1987).
- Criticizing attempts at redefining and modernizing the concept of authority by functionalizing or operationalizing it. Functionalizing means considering

authority as equivalent to power, coercion, violence, intimidation or whatever else might make people obey. It can be partially agreed upon on the grounds of attributing a functionalist approach to authority, which is concerned with making people obey. But it would be unwise to reject altogether the possibility of redefining and relocating authority in a modern and more intelligible framework. It goes contrary to my study's methodology of shifting the conceptual framework from a contractual to a broader and more empirical framework that can make sense of authorities in our present-day global politics in clear contradiction to power and coercion.

On the concept of authority, as evident from the different accounts of authority, scholars remain highly conflicted. The above discussion has highlighted some of the major controversies around it, which can be summed in the following points.

- The first controversy concerns the origins of authority: Some make use of social contract theory and the consent principle. But the contractual model fails to make sense of how international institutions sometimes develop their authority and competences beyond what states originally consented to. Even in present-day transnational governance, state consent is crucial in the legitimization of global governance (Peters and Schaffer 2013).
- The second point of difference is the Authority – legitimacy link: Authority as legitimate rule is presented by some scholars (Lake 2009; Hurd 2007; Raz 2006), but there are others who break apart the two for analytical advantages, like Zürn (2018) and Krisch (2017).
- Third, some scholars (Lake 2009, 2010; Orford 2011) disagree on differentiating authority from power and coercion, or agree but still end up conflating authority with power or persuasion for operational purposes. There seems to be a legitimacy dilemma: if one differentiates authority completely from coercion, self-interest, and reasoning, then legitimacy appears to be empirically implausible. But if one defines authority in combination with coercion and self-interest, it runs the risk of conflating authority with illegitimate transnational use of power.
- Fourth, controversy concerns authority and the obligation to obey. Joseph Raz's (2006) concept of the problem of authority raises it as a moral problem of

subjugating one's will to that of others. Furthermore, it is the most critical issue when it comes to international authority, because if authority is understood only in terms of subjects obligated to obey or in terms of binding rules, then other forms of alternative authorities which do not necessarily work in a command and obedience arrangement, like private regulators or rating agencies, would be excluded as forms of authorities.

I further extend my study's hypothesis: authority and deference to authority cannot be measured; all we can do is to observe how consequential, not consequential, or different consequential authority relations are. In this regard, Ian Hurd (2008, p. 31) has presented the idea of 'behavioural consequence of authority' in locating authority in global governance. In the pursuit of clearly locating and testing authority, he also wonders if an empirical test can be developed which could determine whether or not there exists a vertical dimension to authority relations in the international system.

Obviously, we are interested in studying international authority with a belief that its presence, nature, and functionality affect how world politics unfolds. There must, therefore, be an observable behavioural consequence of authority, which is taken up in one of my study's central research questions – how consequential, not consequential, or different consequential authority is – in order not only to locate authority but also to understand the nature and behavioural consequence of authority in its different forms and on varying levels. If it is observable, then one might think that it is, in principle, liable to test as well. However, observable and testable in principle does not necessarily mean that authority is testable in practice, as Ian Hurd (2008, p. 31), also argues: 'authority might be inherently untestable'.

Although Hooghe, Marks et al. (2017) in their book discuss the theoretical-conceptual underpinnings of the 'Measure of International Authority (MIA)', based on data collected from seventy-six international organisations, yet they make use of certain indicators to make observations and the data they produce is no less prone to errors. It might be impossible to test empirically if the UN Security Council has authority over states either vertically or horizontally, because its authority is based on the psychological belief in legitimacy and scientific or quantitative measures cannot be applied to subjective beliefs.



There are some practical obstacles to testing or measuring authority, one being that authority as a concept is undefinable; as mentioned above, there is no definitive explanation of it. Therefore, a different but equally accurate definition of authority would lead us to devise a test that might apply to one specific definition of authority and not others (Cronin and Hurd 2008). The second hurdle in testing is that, if we are able to observe typical behaviours consistent with international authority, then we should also have some of these behaviours inconsistent with competing forms of power, coercion, persuasion, and self-interest. Such a problem of observational equivalence between authority and other forms of power, as Ian Hurd (2008) puts it, results in the problem of international authority in two ways; first, it indicates that there are few available methods and models to borrow and use in developing an understanding of international authority relations. Second, it further provides a reason to believe that, for now, testing and quantitatively measuring authority is practically impossible.

Therefore, we go back to our initial proposal of sticking to observable behavioural consequences of authority by treating the concept of authority on sociological grounds in social relation terms. Again, for observing and measuring subjectively behavioural implications of the existence and function of international authority, different scholars have given different proposals. Cronin and Hurd (2008) proposed three possibilities in this regard; compliance, justification and unavoidability. Each sets out to measure a different behavioural consequence of international authority. Zürn (2018), in *Global Governance Theories*, not only tries to locate international authority under his liquid and reflexive approach to international authority, but he also introduces a rational voluntary deference model for observing the behavioural consequence of authorities in global governance. Joseph Raz (2006) presents a 'service conception' of authority, where actors are enabled to conform better to reason.

All these methods for testing and observing authority relations target different implications/consequences of authority. They are not conclusive in producing results for testing authority due to operationalization problems or large assumptions. As Ian Hurd (2008) argues, not all instances of compliance in global governance are attributable to the existence of authority. How many times have the UN Security Council's resolutions been ignored? Does this indicate that the UN Security Council does not have authority? Likewise, with the indicator of a justification or legitimation narrative, why would states bother to give justification for their actions (in terms of agreed upon international rules & regulations) to the international

authorities, let's say to the UN Security Council in the case of conflict, and to the IMF in the event of economic turmoil, if they did not possess authority? If the institutions were without authority, then states and other actors would surely not bother themselves with justification.

The deference of countries to international authority, shown in the episode of the Invasion of Iraq in 2003, by waiting for the UN Security Council's approval before supporting America's desired agenda, is empirical evidence of international authority and its legitimacy. And why would international organisations go through the constant trouble of legitimation and re-legitimation processes in winning the recognition of states and societies, if not to hold on to their authority? Because coercion and use of power does not require legitimation, recognition or, in the above episodes, the authoritative backing of international organisations like the UNSC. Lastly, the unavailability indicator is the evidence of authority, for instance in the event of the Invasion of Iraq in 2003, when the U.S also relentlessly tried to get its desired agenda approved by the UN Security Council.

Scholars have argued both for and against the existence of international authority, but both sides depend more on assumptions than on empirical evidence. For instance, in the event of the Iraq Invasion in 2003, the reluctance of the U.S allies to get on board with the American agenda without a prior UNSC resolution is interpreted or assumed to be a sign of the existence of authority in global governance.

Above, we discussed some approaches for locating and testing sociologically the existence and nature of authority relations, which all indirectly reflect the problem of international authority in combination with my study's previous explanation of such problems, arising also from pre-defined and fixed conceptual frameworks of authority. No doubt, there is no conclusive method of testing and measuring international authority, and all the tests discussed above faced some operational and practical problems. Nonetheless, they help at least in the conceptual clarity of authority. The discussion above around the concept of international authority, has successfully attempted to sift some of the excessive and misleading approaches to the concept of authority. The turning to authority and the disagreements on how to understand it have extended the reach of the concept and helped to develop novel empirical research questions and hypotheses previously invisible to researchers. Thus, a turn to authority beyond contractualism represents a new and productive research project.

### 2.3 Contractual and Command-oriented Authority Scholarship

Authority plays a central role in politics. Yet, in many scholarly works (Lake 2010; Cooper et al. 2008; Hooghe and Marks 2015; Arendt 2017), a very narrow understanding is drawn of the concept of authority. It is usually confined to a state and contractual model of a command-and-obedience framework, or a legalist understanding, or is conflated with power and persuasion. Such an understanding is driven or inspired by a political authority arrangement in the domestic realm. In this traditional approach of contractual or command-and-obedience model of authority, and the subsequent framing of the challenges relating to authority and its legitimation in global governance, much of the scholarly work either misses the true nature of authority or fails to make sense of the new and multiple authorities in the international context, or both.

Despite the changing empirical landscape on the global level, many of those who today advocate greater attention to authority and its challenges (legitimation and effectiveness) in the international realm, end up focusing on theoretical features of the traditional conception of contractual and solid authority, inspired by the domestic command-and-obedience arrangement. The best example of this approach is David Lake's (Lake 2010, p. 587) discourse on authority in global governance, where he himself acknowledges that 'relying too much on a formal-legal conception of authority is inappropriate to an international setting'. Yet, in his conception of 'relational authority', he somehow winds up at the same old command-and-obligation or order-and-compliance approach to the authority relationship in establishing and sustaining a political order, under the social contract framework.

David Lake looks at the concept of authority and the presence of hierarchy from a social contract framework. He considers authority as a 'social contract in which a governor provides a political order of value to a community in exchange for compliance of the governed with the rules necessary to produce that order' (Lake 2010, p. 587). The contractual framework of authority allows Lake to reconceptualize global governance as a mixed set of actors who exercise authority across national borders. This definition includes states exercising authority over states (hierarchy), international institutions exercising authority over their members (international authority), and non-governmental organisations and corporations exercising authority over transnational communities (Lake 2009). There are two major aspects to Lake's conception of authority. First, under his definition of authority in global governance (providing a

political order of value), it is argued that international authority sets out to deal with transnational issues in a pareto-improving manner, which is not always the case:

Authority can also be used to benefit a governor or her supporters at the expense of others in the relevant community. Authority is always wielded by someone for some purpose: sometimes it is used to increase the welfare of everyone in a community, sometimes to distribute from the governed to the governor (and her supporters), and sometimes for both ends simultaneously (Lake 2010, p. 591).

Second, like most theorists of authority, Lake also takes a theoretical-philosophical-legal normative approach in defining authority in terms of legitimacy as rightful rule. He employs a classical conception of legitimacy as a tripartite right of the ruler to rule, to be obeyed, and a right to coerce compliance. This is so because, for Lake, coercion is a necessary part of authority. To him, the use of coercion is not an indication of the absence of authority/legitimacy, but rather a capacity for coercion is part of authority's functionality (Lake 2010). Lake's conception of authority fails to define authority in contradistinction to coercion, because he develops an interdependent link between authority and coercive capacity. Therefore, the problem of authority remains unresolved.

Likewise, Cooper et al. (2008, p. 505), drawing on Lake's command-and-obedience approach, try to understand the authority of international institutions. They also limit their understanding of authority to the contractual framework of formally or legally delegating authority or sovereignty to international institutions. They believe international institutions exercise authority 'when states recognise, in principle or in practice, their ability to make legally binding decisions'. They, just like Hooghe and Marks (2015), end up at a legal authority concept, trying to measure and explain international authority but instead getting wrapped around legal authority – the formal delegation of decision-making powers.

Despite the many differences between Cooper et al. (2008), Hurd (2008), Lake (2010) and Hooghe and Marks (2015), at least at some levels they share the belief of political authority as a legitimated power. However, in contrast, Zürn (2018) and Krisch (2010) present their concept of authority beyond traditional conceptions like authority as rightful rule, or authority strictly dependent on coercion and power-conferring norms to provide a political order of value. They present new and alternative conceptions of authority which are reflexive and

liquid in character, where in some instances rules and decisions by international institutions compel state governments to take actions they have not consented to, and in other instances they influence individuals directly through intervention in social affairs.

Zürn (2018) differentiates between epistemic and political authority, which can be exercised by international institutions. In these new conceptions of authority, legitimacy or deference to authority is reflexive. An institution has authority when the actors acknowledge that it is providing a quality service by making competent judgments and providing expert knowledge towards some common good or social purpose. Nonetheless, international institutions require legitimation, which leads to politicization and an unending process of legitimation, de-legitimation, and re-legitimation, with rising public awareness of the policies and procedures of international institutions. In their case, an institution may be legitimate in its exercise of authority if the rules and judgements it produces are in line with normative beliefs of common good and procedural fairness and transparency.

#### **2.4 Authority Legitimation, De-legitimation, and Re-legitimation Literature**

The changing landscape of authority in global governance, marked by multiplication of authorities in global governance is just now starting to be understood and explained by some scholars, such as (Krisch 2017; Macdonald and Macdonald 2017; Peters and Schaffer 2013; Mende 2021; Ball 1987; Todorov 2010). Although some schemes of accountability and legitimacy have also been presented by these scholars, empirically there is more to see in the ways these new authorities, with their informal and dynamic, or as Zürn (2018) puts it, with their liquid and reflexive characters, are sustained, and from where they derive their authority. These authorities are dependent on an institution to constantly re-establish and renew its authority in the absence of a formal legal framework, thus making them fundamentally linked to the necessity of a legitimation cycle (gaining, developing, enhancing, or repairing legitimacy) (Black 2017). Therefore, there is a need for more liquid conceptualization of authority and understanding of its sources and modes of operation.

Julia Black's (2017) analysis of institutions in transnational regulatory governance comes close to Zürn's concept of reflexive authorities. She also finds transnational regulatory authorities in need of constant legitimation; unlike domestic authorities, which are protected by contractual or state laws, authorities on an international level need to gain and regain or periodically

renew the allegiance of their legitimacy constituencies and they require strategies in doing so (legitimation narratives). Ole Jacob Sending (2017a, 2017b) also looks into the significant aspect of how global institutions establish and maintain authority, relevant to our question of how authority is established in an international context. He also recognises the constant struggle for recognition, but his account differs from both Zürn (2018) and Black (2008).

Ian Hurd (2008), believes that legitimacy is possible when any authority/organisation conforms to certain purposes and goals that are consistent with the broader norms and values of its society. Some consistency between authority and social values is a condition for legitimation. When these conditions of legitimacy are met, then there are mainly three ways that an authority can contribute to its legitimation, de-legitimation, and re-legitimation process (Zürn 2018; Cronin and Hurd 2008).

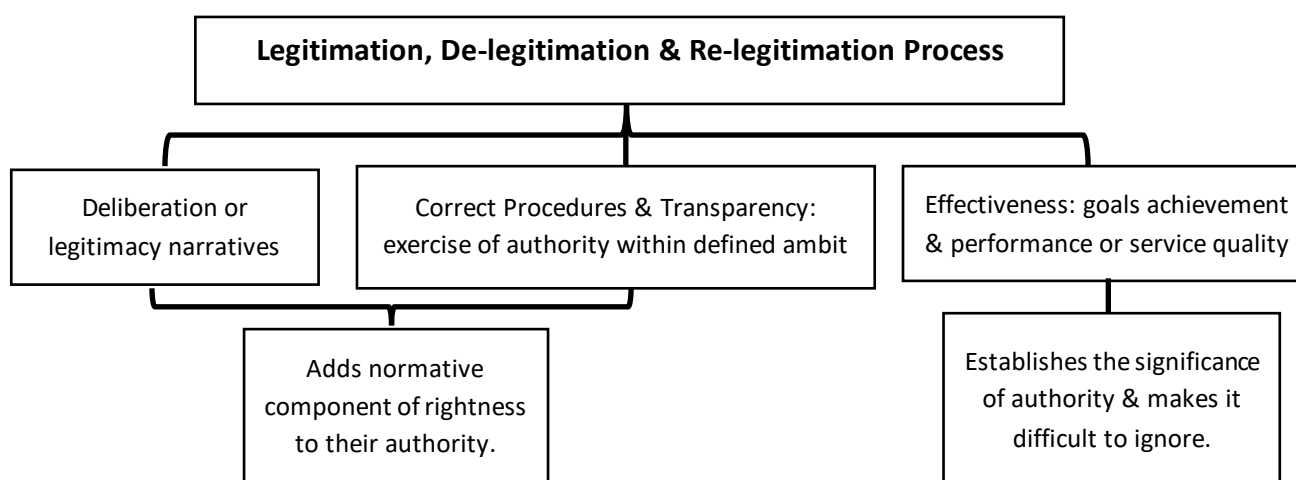


Figure 7: Authority's Legitimation, de-legitimation & re-legitimation process

These practices can contribute towards people's belief in the legitimacy of authority and thus transform its influence into authority. Through this process, actors try to legitimize their authority by conforming to important rules, norms, or laws accepted as appropriate. In contrast to a power relationship, in which coercion or the threat of coercion is the means to induce compliance, authority is a relationship based on a social relation of normative principles like rules, norms, and laws. These rules may at times favour one group over another, but in order for them to have authority, they need recognition and legitimation from the broader political community (Cronin and Hurd 2008; Zürn 2018). The combination of these three processes of legitimation: deliberation/legitimacy narrative, correct procedure, and effectiveness, which can together build the legitimation of any authority. A deliberative process and procedural correctness together form the normative component of the rightness of authority. The

effectiveness of authority establishes its significance, making it difficult to ignore. Combined, they provide authorities the required legitimation plus a social purpose, and it is rare to find all three contributing in the same direction (Cronin and Hurd 2008). However, this is not a fixed and widely accepted legitimation process. Other scholars (Black 2008; Zürn 2018; Raz 2006; Bogdandy et al. 2008; Marmor 2011; Todorov 2010) have proposed some other schemata on authority.

In some other scholarship, such as Peters and Schaffer (2013), Ian Hurd's concept of authority and legitimacy is criticized, though they believe that Hurd's conception of authority and legitimacy is both theoretically relevant, drawing on sociological principles of social relations and empirically useful for analysing actors' behaviour. However, first, in the global politics paradigm, can Hurd's argument that international authority is exercised in a hierarchical relationship and on the basis of internalized beliefs about legitimacy be proved? Second, considering legitimacy as an internalized subjective feeling of moral obligation or habit of obeying is problematic. Legitimacy, in Hurd's view, operates mainly in an emotional register, and if we understand legitimacy as an emotional intuition, it will ignore the rational reconstruction of legitimacy and authority in terms of rational voluntary deference (Peters and Schaffer 2013).

Third, Hurd's concept of legitimacy based on moral obligation undermines reason. In other words, he calls for the surrender of private judgment and critical faculties by limiting the concept of authority to emotions and habits, rather than considered reasons, and such authority is empirically unreal in the political context. This is both because international institutions are obligated to provide legitimacy narratives and reasons for their actions because the subjects or addressees (states/individuals) are expected to explain their reasons for compliance. Peters and Schaffer (2013) argue that an interactive learning process based on arguments, deliberation and scrutiny forms the basis of legitimation. In the reflexive conception of authority, too, we observe reason-based grounds for critical legitimation.

Similarly to Cronin and Hurd (2008) and Zürn (2018), Julia Black (2017), in her concept of liquid authority, also gives a sociological understanding of authority's legitimation. She argues that authorities play an active role in their own legitimation by creating, exercising, and maintaining their legitimacy and authority, both of which are directly proportional to their functional effectiveness. She provides three grounds of social acceptance or legitimacy for authorities in a sociological framework (Black 2017, p. 5):

- Pragmatic legitimacy: states or society believes that the authorities pursue their interest directly or indirectly.
- Moral or normative legitimacy: states or society believes that the goals/functions of the authority/institution are normatively appropriate or justified.
- Cognitive legitimacy: the authority/institution is accepted as necessary and inevitable.

In a sociological context, authority and legitimacy are relational, situational, and endogenously produced. Therefore, the legitimacy of any single authority can differ significantly across time and space, and between actors, systems, and contexts. Since new authorities, in particular the epistemic authorities in global governance, depend on direct social acceptance (rooted in social relations) for their legitimacy, rather than on some formal contractual arrangement, there is a need for each authority to create its own legitimacy and unending process of continuous legitimation for the sake of its functional capacity. Julia Black (2017, p. 6) calls it a legitimacy paradox – ‘where authorities need legitimacy (in part) to function effectively and need to function effectively (in part) to gain legitimacy’.

Raz’s concept of legitimate authority is proportionally linked to the subject’s conformity. If conformity with it improves one’s conformity with reason, then authority can be termed legitimate, because authority is believed to help our rational capacity, whose function is to achieve conformity with reason. Thus, authority in this sense is legitimate only if its directives enable subjects to better conform to reason. However, there are some complications when it comes to following the directives of authority. First, what if there are several authorities at the same time and on the same issue area and their directives conflict? Raz’s best suggestion is to decide to the best of our ability which authority is more reliable as a guide. Second, often there are different reasons for doing something. For instance, I may be driving slowly because of having promised my mother to drive slowly, or because the law instructs me to drive slowly, or because of both, or because of some other, very different, reasons. Here, Raz invokes the right-to-rule clause, which binds us to obey the law and makes us duty-bound. He further argues that it is not just binding directives that make us behave in a certain way (e.g., drive slowly), but rather, authority also has an exclusionary reason that is a reason for not following (not acting in certain other ways, like driving fast) reasons that conflict with the rule. Thus,



authority also has a pre-emptive function, which excludes reliance on conflicting reasons which conflict with authority's directives (Raz 2006).

Hristo P. Todorov's (2010) relational concept of authority explains modern grounds for legitimation of authority. He is right in arguing that 'someone has authority only to the extent that others are willing to recognise it. There is no authority without such recognition. Hence, recognition of authority is constitutive for possession of authority' (Todorov 2010). It also comes closer to the concept of natural deference or rational voluntary deference to authority, because it argues that 'there is authority only if we are ready to accept another's opinions to be true and another's judgements to be right out of inner conviction' (Todorov 2010, p. 127).

Todorov rightly uses the distinction provided by Joseph M. Bochenski, (Joseph M. Bochenski quoted in Todorov 2010, p. 130) between political authority (which he terms 'deontic authority', based on a person or institution's social role/position in a political order of society) and epistemic authority (which is based on specialised knowledge) to show how authority can have different grounds for legitimation, functionality, and different behavioural consequences (different consequential).

The table below addresses our broader hypothesis that, in different international social contexts, authority will appear in different ways, it will act upon different sources, will create a different relationship between the rulers and the ruled, and will give shape to different and sometimes, even, to new international structural and institutional arrangements.

*Table 1: Wider Understanding of Authority*

<b>Wider Understanding of Authority: Going Beyond the Political Forms of Authority</b>	
<b>Political/Deontic Authorities</b>	<b>Epistemic Authorities</b>
Based on a social role/position in a political order of a society	Based on specialised knowledge and expertise
Command-&-obedience-based authorities with authoritative commands	Interpretation, advice, suggestion, & request-based authorities with direct or indirect behavioural consequences
Can be understood and explained under the contractual functionalist framework of authority: compliance or voluntary acceptance of authority does not typically apply to command, directives, or ruling but to the institutional or political order.	Can be understood under the epistemic framework of an expert knowledge and advice model: compliance or recognition of authority is based on its specialised knowledge and expertise
Institutional reasons for compliance: recognising the political order or normative principles on which authority rests	Recognition/compliance based on acknowledging one's own rational limitations (reflexive legitimacy: deference earned by the quality of services)

Non-compliance has serious punishment implications: non-recognition of political authority means non-recognition of the institutional and political order on which authority rests.	Non-compliance has no serious direct implications and sanctions: if our trust and recognition in epistemic authority is shaken, it stops being an authority for us. However, in global governance, non-compliance has indirect implications for image, reputation, or diplomacy. The best example is of rating agencies & FATF, whose authority, though epistemic and suggestion/advice-based, can have indirect implications. For instance, a poor rating of a product can influence the buyer and ultimately compel the company to accept the rating agency's advice.
Subject to criticism and scrutiny: but authority is not lost	Subject to criticism and scrutiny: authority can be earned and lost
Bestowed legitimation, de-legitimation, and re-claiming legitimation	Legitimation, de-legitimation, and re-legitimation cycle

Bogdandy et al. (2008) refer to any kind of governance activity by international institutions as 'international public authority'. They cover two fundamental problems of Joseph Raz's (2006) account: conflating legitimacy with authority and the bindingness of authority rules. They argue that neither the usual state consent nor the belief that international institutions preserve certain collective values (service conception) can provide grounds for legitimation to an institution's exercise of authority. Rather, their exercise of authority requires external normative legitimation through a public law framework, thus breaking the authority-legitimacy link. Bogdandy et al.'s (2008) account of authority includes both the binding and non-binding acts of authorities in global governance structures. The non-binding acts of authorities refer to epistemic authorities working with requests, suggestions, and recommendations, which indirectly impact the behaviour of the addressees, as in the case of rating agencies. Unlike the Razian account, Bogdandy et al. do not conflate legitimacy and authority and prevent the assumption that authority, by default, comes with a binding clause.

Andrei Marmor's (2011) account of authority takes an institutional approach in developing an understanding of what authority is and what makes it legitimate. His two main research questions - what it takes to have practical authority, and what makes authority legitimate - are quite relevant to the authority-legitimacy question. In fact, his reasons for choosing an institutional conceptual framework are also grounded in his attempt to understand what practical authority is and how the legitimacy of authority (which is a tricky business in international authority study) is attained. He uses an institutional conception of authority to explain his

argument as to why authorities are institutional in nature and how the institutional concept of authority addresses the question of the legitimacy of authority (Marmor 2011).

Given so many different approaches to legitimation, for now one cannot agree more with his argument that no single principle determines the conditions for the legitimacy of practical authorities; my study also argues that the grounds or sources of legitimacy have changed over time. In some cases, it is consent and in others it is not; how far consent goes and the scope of legitimacy it carries are set to vary from case to case. Even if participation is fully voluntary, one does not strictly consent to every aspect of the practice or the institution in which authority operates. In this regard, when participation in a given practice of an institution is not voluntary, the legitimacy of authorities arising from such practices or institutions depends on there being a good reason for participation in the first place. The reason for participation in and commitment to the practice, then, have an impact on the legitimacy of authorities. Marmor's understanding of the legitimacy of authority is close to the 'service conception' of Raz (2006), where he argues that authority is legitimate if it improves the subjects' ability to conform better to reason. His institutional concept is also useful in understanding the complexity of authority's legitimacy, which is subject to change and varies from case to case.

The most useful account of authority's legitimation, de-legitimation, and re-legitimation in my study is provided by Tallberg et al. (2018), who look specifically into the question of the legitimacy of international authority or global governance institutions (GGIs). They conducted systematic and comparative research on legitimacy in global governance on four major lines.

- They developed a sociological approach to GGI legitimacy in the face of existing literature, which has been predominantly normative, examining how far GGIs conform to values and principles like justice and democracy. This account joins the recent efforts at understanding authority in global governance on sociological grounds, where the beliefs and perceptions of different audiences determine if the exercise of authority is rightful and appropriate.
- Different and wide-ranging legitimacy audiences: They adopted an approach that goes beyond the traditional focus on states as the principal audience for GGI legitimacy and included actors ranging from states to social movements, because in today's globalized world, legitimacy for GGIs comes not only from states but also from civil society actors, media, political parties, and common citizenry.

- Comprehensive analysis of the sociological legitimacy of global governance: instead of focusing on any specific aspect of authority's legitimacy in global governance, they unpack all authority-legitimacy components, which include the sources of legitimacy, the practices of legitimation and de-legitimation, and the consequences of legitimacy for the effectiveness of GGIs and competition between them.
- According to Tallberg et al. (2018), the legitimacy of authorities in global governance is socially embedded, which enables actors to influence beliefs about legitimacy through the use of legitimation and de-legitimation practices. Legitimation, de-legitimation, and re-legitimation are processes employed by both GGIs and their audiences in either justifying and solidifying their authority or contesting their authority in the case of de-legitimation tactics by opponents trying to influence the audience's perception of these GGIs (Tallberg et al. 2018; also cf. Zürn 2018; Raz 2006). With these practices, acceptance and recognition of authority is purposefully sought or withdrawn.

Thus, GGIs and their supporters may employ legitimation practices aimed at producing recognition among state and societal actors of these authorities' right to rule, while their opponents may engage in de-legitimation practices aimed at undermining the confidence and recognition of states and actors in these authorities. As a consequence of the de-legitimation process, GGIs and their supporters then employ re-legitimation practices to salvage the lost confidence and recognition of states and societal actors, by introducing legitimacy narratives and through symbolic or otherwise practical institutional changes, such as more transparency, participation and fairness (Zürn 2018). Therefore, Bäckstrand and Söderbaum (2018) rightly put it that 'such legitimation and de-legitimation practices may be discursive, institutional or behavioural'. Now, to see what practices are used, by whom, targeted at what audience, and to what effect are questions subject to a sociological study of authority and legitimacy.

My brief literature review of the existing scholarship on authority and legitimacy in global governance shows that a sociological approach has so far not been fully employed in understanding the dynamics of the changing nature of authority, its functions, sources of legitimation and behavioural implications. Although some of the most recent literature (Bäckstrand and Söderbaum 2018; Furedi 2013; Krisch 2017; Mende 2020; Tallberg et al. 2018; Zürn 2018) has brought to light new and important aspects of global governance, it is for my research

study to build on their insightful knowledge of the research problem and present an interpretive comparative historical analysis of international authority. My study moves beyond the state of the art by applying empirical and sociological understanding of global governance institutions and their legitimation to a wider array of actors and audiences, developing an interpretive, comparative historical approach, and answering questions concerning the nature, forms, functions, sources of legitimation and differing behavioural consequences of authority in global governance.

## **2.5 Scholarship on the Dynamic, Non-unitary and Fragmented Character of International Authority**

Likewise, some scholars (Mende 2020; Macdonald and Macdonald 2017; Krisch 2017; Zürn 2017; Black 2017; Sending 2017b) have also highlighted the increasingly dynamic, non-unitary, and fragmented character of international authority. They have, in different ways and to varying degrees, indicated that the shifting social and institutional formations with regard to authority structures on a global level have implications for authority functions, legitimacy, and consequentiality.

However, this recognition has not yet translated into a clear change or shift in the conceptual framework for understanding new authority structures and changed grounds for legitimation. It is on this research gap, that my study proposes an approach of going beyond contractualism, which refers to attaining wider understanding of international authority. In this regard, it employs conceptual frameworks based on empirical sociological normativity, with the objective of going beyond the Westphalian paradigms of authority and using the liquid and reflexive concepts of authority in exploring and making sense of the new authorities at play in global governance. This will provide not only a shift in the conceptual framework from the solid authority concept but will also provide more systematic analysis of these new, informal, dynamic, fragmented, or what Zürn calls the loosely coupled spheres of authority.

It can also be called a transformationalist governance literature because it stands in contrast with contractual or constitutionally structured authorities. It is dominantly empirical, focused on the authority relationship and working in the modern global world order. Through empirical research, some scholars (Zürn 2018; MacDonald and MacDonald 2017; Krisch 2017) have recognised that informal and fragmented authority structures present both challenges and

opportunities (deepening or decline of global governance) for the functioning of authority and its sources or processes of legitimization.

Kate MacDonald and Terry MacDonald, in their article *Liquid Authority and Political Legitimacy in Transnational Governance* (2017), focus on the institutional mechanisms (public accountability & pragmatic experimentalism), required for attaining political legitimacy for liquid authority. They use the concept of liquid authority as a useful conceptual tool for more systematic analysis of the normative implications for legitimacy of fragmented, informal, dynamic, and interactive transnational governance processes.

Unlike our understanding of liquid authority in my study, where liquidity of authority is understood in a sense that it flows, does not have a fixed shape, and is difficult to explain under a simple command-and-obedience kind of framework, Kate MacDonald and Terry MacDonald understand liquidity of authority in an institutional mechanisms context, where institutional dynamism, inspired by its informality, multiplicity and other structural properties, make authority liquid. However, in my study, liquid authority – as an implication of reflexive authority (authority in a constant process of legitimation) – is known for its high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and control in the global governance context.

Likewise, on the question of legitimation, Kate MacDonald and Terry MacDonald (2017), elaborating on the causal mechanism between changing authority structures and legitimation mechanisms, argue that as authority structures change so should legitimation mechanisms. They resist 'one size fits all' institutional prescriptions for legitimising inter- and transnational authorities (MacDonald and MacDonald 2017, p. 2). They believe that legitimising mechanisms should vary with differing authority structures. I also argue that the mechanisms defined to legitimize authority in global governance institutions and the frameworks for analysing authority relations should vary with the liquid characteristics of authority. Since they take a broader and sociological take on the problem of legitimation of authority in global governance, the upside of such an approach is that their theoretical framework goes beyond a contractual understanding of authority. However, the downside of their approach is that it is confined to understanding just the institutional mechanisms of political legitimacy for liquid authority.

There is growing literature on the changing, developing, and shifting nature of authority in the governance area (Sending 2017a, 2017b; Zürn 2018; Ball 1987). In this regard, it is now common for scholars to refer to the authority of the United Nations. For instance, there are some scholars examining the change in the nature and functions of authority over time around the UN Security Council (Cronin and Hurd 2008). Likewise, many students of the UN Security Council claim that its authority has been on the increase in recent years (Malone 2004). Yet, there has been little research on what it means for the theory of global governance, because the UN Security Council and all the authorities that have developed over time 'appear anomalous in the theory of international politics. They do not logically fit into the existing conventional models of authority and governance, and the reluctance of most scholars to conceptualize authorities and institutions like the UN Security Council beyond traditional notions has led them to understand and explain authority in fixed and preconceived conceptual frameworks, which are often narrow and misleading. For example, realists tend to study the Council as an institution for the great powers to balance their competition and conflicts; institutionalists as a mechanism of cooperation for these powers to collectively manage global affairs; and contractualists see it as a delegated power under the command-and-obedience framework in exchange for a responsibility-to-protect service (R2P).

This is where my study on the analysis of the problem of international authority comes in, not only for understanding and explaining the nature, sources, and functions of international authority beyond the predefined conceptual frameworks, but also for understanding the changing forms of authority in the international context.

As my study argues that the non-binding epistemic authorities which don't exclusively function with a command-and-obedience mechanism can be influential and different consequential, likewise Bogdandy et al. (2008) argue that 'formally non-binding acts of international institutions may be authoritative too' (quoted in Peters and Schaffer 2013, p. 15).

In the same way that my study attempts to shift the conceptual framework from a narrow, state-focused, contractual, command-and-obedience understanding of authority to a broader array of global governance institutions, so do Bogdandy et al. For this purpose, they deliberately include a concept that non-binding acts of international institutions can be authoritative too, which refers to a wide range of authority structures in global governance. However, their account is not clear on how these new authorities, which are not solid, which do not function

exclusively with a command-and-obedience approach, and which rely on constant legitimation but nonetheless are authoritative, can be different consequential in dealing with transnational issues.

The impact of exercising authority is usually complex: it results in both constraints and opportunities for subjects and distributes them unevenly. In this regard, Zürn (2018) also discusses the biased exercise of authority in his account. Bogdandy et al. (2008) are concerned with how authority affects freedom, and that the normative problem of international public authority is its unilateral nature, which means that there is the possibility of biased or arbitrary exercise of authority, where like cases are not treated alike. It is a significant demand of legitimacy that authority be exercised without bias.

## **2.6 Alternative – Beyond Contractualist Authority Literature**

In my study, I attempt to analyse the concept of international authority beyond the Westphalian paradigms of governance and traditional and fixed conceptual frameworks/models like the contractual, legal, and other models of authority, by building upon an alternative understanding of authority – one based on the natural and rational voluntary deference model, with a focus on the multiplications of authorities in global governance. My study of international authority does not aim to develop a theory of authority; rather, it sets out to analyse how different conceptual frameworks broaden or constrain our understanding of authority structures in global governance, thus advancing a debate on authority beyond contractualism.

There has been some literature on the alternative understanding of authority beyond the state and IR models. Raz's normative beliefs are rightly based on 'a reason for an action' or consideration (Raz 2006). However, it would be wrong to argue that the misunderstanding of the authority concept arises out of mistaken normative beliefs rather than a flawed conceptual understanding. It can be attributed to both but not to one, because authority and authority relationships have shifted over time, but Raz's belief that the conceptual understanding has also changed over time is unjustified. However, his argument that 'the overall concept we have now is different from the one we had, or will have, when our concept was or will become different' (Raz 2006, p. 1011) makes some sense only with the condition that our conceptual framework for understanding authority changes.



Here, we must not confuse the number of concepts of authority attributing to social contract, formal-legal or delegated authorities with the actual shift in the conceptual framework or with the hypothesis of looking beyond these conceptual frameworks. The number of existing conceptual frameworks in the IR discipline or in global governance theories only indicates the significance given to models and frameworks in studying global politics and governance from a predefined perspective, rather than from the authority relationship standpoint. These are the existing pre-defined and fixed concepts, or even frameworks so to say, which compete with fluid boundaries and those who use them each claim merit for it, but none of them qualify to claim a shift in the conceptual framework for studying authority. In fact, my study 'beyond contractualism', refers to a shift in the conceptual framework from these existing concepts or approaches of authority.

Terence Ball (1987), on the conceptual change, shares two concerns with Hannah Arendt: one, that rehabilitating and modernizing the concept of authority by functionalising or operationalising it is akin to conflating authority with power, coercion, and violence; two, that reconstructing authority in an 'epistemic' (Ball 1987, p.48) understanding runs the risk of assimilating political authority with non-political epistemic authority or blurring the distinction between 'to be an authority' and 'to have authority'.

These are concerns which have already been addressed by some scholars in reconstructing authority or presenting new and alternative forms of conceptual framework. In this regard, Zürn (2018), Krisch (2017) and I clearly draw a distinction between authority and power or coercion. In fact, the whole debate of authority today revolves around the aim of understanding authority in contradistinction to power, coercion, and violence. Likewise, the fear of losing a distinction between 'to be an authority' and 'to have authority' is also sufficiently addressed by Raz (2006, p. 1025) and in my study by drawing a clear difference between theoretical authority (experts whose knowledge make them reliable guides) and practical authority (who through their advantageous positions of power and rule attain coordination and obedience and change things in the world). It is more like someone is or is not an authority versus someone has or does not have authority.

However, this distinction is blurred in my study while considering the new and alternative forms of authorities that have entered the global governance landscape, because there we can find institutionalised epistemic authorities which are expert and reliable guides in specific

areas of concern, like the WHO, and which also exercise authority to attain coordination and obedience, with a power to change things in the world. These are authorities to which we turn not only for advice and guidance but to govern us with reference to certain special areas of concern, like WHO's mandate of global health governance.

This is what Terence (Ball 1987, p.48) refers to as 'Epistemocratic authority', which in contrast to international political authorities like the UN, refers to the claim of a person, group or organisation to rule another on the basis of possessing specialised knowledge not available to the UNSC. In the global governance context, it is even sometimes not available to countries, e.g., in the case of IAEA's gathering and monitoring of nuclear information. These kinds of expert authorities in global governance make our case for reconstructing, redefining, and re-locating authority in modern and more intelligible conceptual frameworks more reasonable.

One may argue that there is nothing new or modern about epistemic authorities, because if we go back in history, we can find both philosophical and political instances of such authorities or their vision of a good society, where political authority and expertise are inseparable and in which the ruler and the expert are one and the same person. For instance, in Plato's Republic, we read of the idea of the philosopher king, which is the genuine idea of knowledge (episteme) (Ball 1987; Reeve 2004). This is a discussion that is to be resumed in more detail in Chapter 4 section 4.1 on pre-modern authorities.

Hristo P. Todorov (2010), has argued in his article for a wider understanding of authority, without just fixating on the political forms of authorities, in response to Arendt's (1961) take on authority, where she treats authority only as a political phenomenon of the past, which lost its meaning in more recent times. Hristo P. Todorov, while answering the question if authority has really disappeared (in the words of Arendt) presents some very logical understanding of authority in general with a distinction between epistemic and deontic authorities (Todorov 2010). His conception of authority aligns with our argument that authority must be understood beyond contractualism and beyond the Westphalian paradigms, which means a wider understanding of authority must be drawn without fixating on any specific form or conceptual framework of authority.

The deference model has been employed increasingly in recent accounts of global governance theory and politics (Zürn 2018; Krisch 2017). But the conclusions and results of this broader

understanding of authority in the global context have not been fully appreciated or utilised in the study of authority (Krisch 2017). In this regard, one significant aspect is to broaden the scope of our study of international authority by including the liquid form of authority (Krisch 2017; MacDonald and MacDonald 2017) and the reflexive form of authority (Zürn 2018), which are characterized by a lower degree of consolidation and a significant dynamism in the global governance structure. The existence of these forms of authorities in global governance comes with a set of challenges regarding their nature, sources, relationship, legitimation and especially their consequences for normative theorising. Existing scholarship (Hooghe and Marks 2015; Lake 2010; Orford 2011; Waltz 1986) on authority and global governance deals with these challenges only in part, and it often continues to understand authority structures through a state-centric framework of contractual, command and solid authority lenses (Krisch 2017).

Modern global society has witnessed the rise of a new system of international rule, which is different in scope, functions, goals, and claims of rightfulness from earlier international authorities. In the words of Zürn (2018, p. 249), 'the 1990s brought in a new system of governance that is different from earlier ones. It is much more intrusive, with more demanding normative principles and possessing more authority and hierarchy'. Our study takes an interpretive-comparative-historical analysis approach to the study and understands the contestation of international authority and recurrent political problems globally and their impact on the world political order, in terms of the deepening or decline of global governance systems.

Zürn is right in saying that today's governance system is different from earlier ones and that it is much more intrusive, with more demanding normative principles, but his claim that it possesses more authority (Zürn 2018), is questionable. From the global governance theory perspective, he provides insightful and agreeable explanations of the current global governance system and the nature of international authority, especially the 'reflexive authority' concept and legitimation problems, but to assume that today's global governance possesses more authority without having conducted any comparative historical analysis is, I believe, an area where research can be taken up on interpretive-comparative-historical analysis lines.

His discourse on international authority is dominantly grounded in global governance theory, with only few references to earlier authorities which extended beyond regions and continents. There appears to be some contradiction on the nature of international authority in

present times, because on the one hand, he argues that today's global governance possesses more authority than earlier ones, while on the other hand, speaking from the empirical perspective against the background of global governance, he seemingly refutes his previous claim by believing that "authority holders (international and transnational institutions) are in many respects weaker than some actors in the global governance system (states)" (Zürn 2018, pp. 37–38).

These two arguments come from very different perspectives and reference points (one in comparison to earlier/past authorities and the second more from the comparison with domestic authorities in the form of state governments, which sometimes tend to oppose and challenge international authority). These could be two different potential research areas. On the first, a comparison of today's international authority with earlier forms, there is not much specific scholarly research either in Zürn's work or in general in other works on the study of global governance.

On the second research area, the contemporary global governance system and its challenges from a global governance theory perspective, not only has Zürn contributed valuably, but there are also plenty of other sources on the subject. Therefore, my study, taking over the first research area – comparison of today's authorities in the global governance with the earlier ones – looks into the sources and functions of today's international authority in comparison to any earlier forms of international authority. The aim of this exploration is to analyse how authority has developed over time; how and whether the functions and sources of authority (legitimation) have shifted over time; if the nature of authority has changed over time (multiple authorities beyond traditional solid models of authority); and if international authority today is more or less or different consequential in all its forms. However, my study does take advantage of the scholarly works of Krisch (2017) and Zürn (2018) on the alternative concepts of authority they propose (reflexive and liquid under the deference model).

Julia Black (2017), presents the liquid concept of authority in transnational governance. Her concept of liquid authority is developed in direct contrast with a formal legal basis, arguing that the establishment, exercise and continual maintenance of authority in transnational governance are closely linked to the issue of legitimacy (Black 2017, p. 1). The liquidity of authority in global governance is informal, based on social and political acceptance, not formal legal rules. It is ideational, referring to ideas of what is appropriate, calling on technocratic

narratives and epistemic claims of expert knowledge – a reflexive basis of authority (Zürn 2018). In the case of liquid authority, there might be some documents constituting authority, but they are not necessarily backed by law. So, inter- and transnational authorities lacking formal legal grounds have to work to establish their authority. In this sense, Julia Black's approach or conceptual framework, employing liquid authority in the context of transnational governance in contrast with constitutionalized and solidified authority, is similar to our broader framework of 'beyond contractualism', which sets out to analyse the newly evolved structures of authority in global governance. The only difference is that her approach is limited to the interpretive function of transnational regulatory regimes, whereas we take a broader approach of looking at the changing, informal, liquid, reflexive, and multiple forms of authorities in the international context in assessing how consequential, not consequential, or different consequential these authorities are in their functional capacity.

As my study emphasizes a dynamic authority concept beyond contractualism, likewise Julia Black also calls for a more liquid conceptualization of authority. As Ian Hurd (Hurd 2008) argues, to draw a clear difference between liquid and formal legal authority, one has to shift the focus to different sources of authority, which are not grounded in a formal legal framework but in social relations. In finding the source of authority in social processes and a rational voluntary deference, the analysis of liquid authority highlights the necessarily fluid, dynamic, and constantly contested bases on which our present-day inter- and transnational epistemic authorities are founded. When authority is not based in law but in some other grounds of social acceptance, then it becomes not only liquid but also highly contested. In this sense, the concept of authority comes closer to a sociological understanding of legitimacy, where legitimacy refers to authority's social credibility and acceptability.

Liesbet Hooghe and Gary Marks's (2015) paper on authority delegation and pooling is focused on the importance of authority design/structure and its functionality. The delegation and pooling of authority reflects the authority of international organisations (IOs) being conditioned on two fundamental facts; 'the scale of its membership and the scope of its policy portfolio' (Hooghe and Marks 2015, p. 1). Lake (2010) also discussed the delegation and pooling of authority but unlike Hooghe and Marks (2015), he neglected to assess the conditions under which delegation and pooling take place and their impact on the design and functionality of authority. By 'delegation of authority', in simple words is meant the granting of

authority to a third party (IO) to perform limited tasks. Their account is of particular importance to my study on two grounds; first it contributes to one of my primary research questions, focused on observing the behavioural consequence of authority. This is because their classification of authority delegation and pooling in IOs and authority as being conditioned by the scale of membership and scope of policy issues, at least theoretically reflects on authority design, functionality, and its behavioural implications. Second, their argument of changing or expanding the policy scope of IOs, conditioning more delegated authorities in IOs, supports our hypothesis that authorities in global governance have changed, evolved, or developed over time, which means they have grown beyond the state and the existing conceptual frameworks that tend to grant them meaning and validity.

In Cronin and Hurd's (2008) book, they have taken a sociological approach to authority, considering authority more a product of socialization than of consent. This means that international authority is analysed differently from the usual philosophical, legal and contractual framework, which addresses our hypothesis of studying international authority beyond contractualism. Cronin and Hurd also come close to the deference model of Zürn (2018) in their sociological understanding of authority by arguing that following authority without thinking is socialisation, not consent.

This shows that the new scholarship in global governance studies is not only shifting its focus to the concept of authority and its relations with power politics, but also acknowledges the need to look at the concept beyond legal, contractual, and delegated frameworks. This is evident from the sociological framework of Cronin and Hurd (2008), the liquid and reflexive authority concept of Krisch (2017), Zürn (2018) and Black (2017) and the turn to authority beyond states (Peters and Schaffer 2013). Kate MacDonald and Terry MacDonald (2017) also approached authority on sociological grounds, as institutionally induced deference.

Despite the different forms that authority may take across different areas of concern (security, health, environment, human rights, etc.), there is a continuous struggle for authority in international institutions, which refers to relations between actors that engage in global governance. Therefore, a broader approach beyond the contractual model, which makes sense of new authorities with their liquid and reflexive characteristics, can provide us the analytical tools with which to explore how authority may vary on a scale from solid to liquid, from firmly institutionalised to continuously contested (in reflexive ways).

Table 2: Critical Overview of the Extensive Literature Review

Sr. No	Authors	Authority Concept	The Problem of Authority?	Authority Legitimation Question	Alternative & Innovative Approach?
01	Hannah Arendt (2017)	Reconstructing authority in the conceptual frameworks in which it originally functioned: State and Contractual Model of Authority. Authority only exists in national & domestic politics	Authority has vanished in the modern world, because she believes authority only existed in the nation-state. Modernising the concept of authority by functionalising it is akin to conflating authority with power, coercion, & violence.	Epistemic authority conception of performance and quality service providing legitimation of authority	Same old contractual and state model of authority.
02	Andrei Marmor (2011)	Institutional Concept of Authority: authority determined by some social practice, which refers to human activity governed by rules & conventions or by institutional practice, which means a rule-governed practice with mechanism for change and compliance.	Fails to identify the problem of authority. Rather creates one by confining authority strictly to a legal framework.	Legal basis of legitimation: Authority based on power-conferring norms, rules, or conventions which are institutional & systemic in nature.	Explains authority from quasi-judicial perspective. Old legal framework. Not all authorities in global governance are based on power-conferring norms or are systemic with authoritative change and compliance mechanism
03	Joseph Raz (2006)	Service Conception of Authority focuses more on the nature of good & successful authorities rather than what authority is. Pre-emptive	Problem of authority twofold: theoretical – misunderstanding of the concept of authority – & moral – how to justify	Raz's concept of legitimate authority is proportionally linked with subject's conformity. If conformity with it improves one's conformity	Slips into contractual framework of authority, where the people's will is subjected to authority in exchange for some services/functions like

		function of authority excludes conflicting reason.	people subjugating their will to that of another.	with reason, then authority can be termed as legitimate.	protection and welfare. In Raz's case it is enabling subjects to conform to reason and excluding conflicting or diverting reasons.
04	Ian Hurd (2008)	Sociological understanding of authority as a social relation: determining if a particular relation of power counts as an authority or something else	Difficulty in clearly locating & measuring authority in international contexts in clear contradistinction to power, force & persuasion.	Authority as a legitimated power: legitimacy as an internalized subjective feeling of moral obligation or habit to obey	Deference model based on relational authority concept from sociological perspective
05	Kenneth Waltz (1986)	Legalist understanding of authority confined to national constitutions: Global governance an authority-free zone.	Contributes to the problem of authority by arguing that national politics is the realm of authority, while international politics is the realm of power or struggle.	Derives legitimacy from contractual rules and norms	Contractual or nation-state model of authority
06	Anne Orford (2011)	Functionalist understanding of international authority: Confined to service and functionalist conception of authority under the principle of 'Responsibility to protect' (R2P) of the UN	Rather contributes to the problematic character of authority by presenting it in service & functionalist conception.	Derives its legitimacy from its contractual service delivery of providing protection	Slips into contractual framework of authority, where people's will is subjected to authority in exchange for services/functions like protection
07	Terence Ball (1987)	Epistemic and rationalist understanding of authority based on expert knowledge	Rightly pointed out the problematic character of authority, confined to pre-defined conceptual frameworks. When any framework is outgrown,	Derives its legitimacy from providing expert knowledge and services	Tried to reconstruct authority in epistemic framework of specialised knowledge-based authority claim



			discredited and overthrown, then concept like authority loses meaning and relevance		
08	Liesbet Hooghe & Gary Marks (2015)	Authority delegation and pooling focused on authority design, structure, and functionality in global governance	Neither explains the problem of authority nor goes into one. Provides an empirical understanding of authority in delegation framework.	Derives its legitimacy from formal authority delegation or pooling charter	Delegation and pooling framework. Focused on delegated authority rather than what authority itself is
09	Armin von Bogdandy et al. (2008)	International Public Authority and other non-formal, non-institutionalised state authorities and also private authorities not legally instituted. A legal public law approach to all these authorities in global governance	How to make sense of private authorities which perform public-interest functions with no legal personality. Rightly points out that global governance and its legal instruments, like international public law, are state-centric or geared more towards state-instituted international public authorities	Discourse on legality of an international organisation and its exercise of authority is not in sync with the discourse on legitimacy of its acts. For instance, the legitimacy of certain actions of a private business can be cast into doubt and criticised but they are surely not illegal because they escape legal standards or due to them being non-binding in nature	Goes beyond the narrow contractual and solid understanding of authority to wide range of authorities in global governance. Specifically, private institutions exercising public authority
10	David Lake (2010, 2009)	Functionalist understanding of authority under a social contract framework: in which a ruler or organisation provides a political order of value to a community in exchange for their unconditional compliance	Rather creates a problem of authority by confining authority to a contractual framework. Considers coercion as part of authority's functionality	A classical conception of legitimacy: Authority as a rightful rule, where it is a tripartite right of the ruler to rule, to be obeyed, & to coerce compliance. Coercion is not an indicator of the absence of authority, but it is part of authority's functional capacity.	Provides classical social contract framework of authority

11	Michael Zürn (2018)	Provides a reflexive concept of authority, which is different from a command-and-obedience arrangement, but at the same time highly consequential with behaviour implications.	To Zürn, authority is flawed and problematic in two ways; first, what it does is not enough. Second, the basis of its legitimacy is too small for what it already does. Indicates a need for wider understanding of authority & its changing grounds of legitimacy.	Subject to scrutiny and constant legitimation process. Legitimacy or deference to authority is reflexive, meaning critical & enlightened subordinates recognise authority because they acknowledge their own rational limitations.	His reflexive concept of authority which does not work exclusively with command- and-obedience framework but also includes demands, or requests goes beyond the contractual & solid understanding of authority.
12	Nico Krisch (2010, 2017)	Liquid authority concept: characterised by lower degree of consolidation and significant levels of dynamism, signifying that authority is a social fact and is therefore, subject to historical shifts and changes.	Rightly points out that a very narrow understanding is drawn of the concept of authority, usually confined to contractual & command frameworks, inspired by political authority arrangements in the domestic realm. This approach is often misleading for it misses the true nature of authority & provides framing for the analysis of follow-up problems of authority like legitimacy, accountability, & legality.	The standard accountability and legitimation tools do not apply to a widespread dynamic authority in global governance. Constant legitimation process based on legitimacy narratives combined with social purpose.	Provides an alternative conception of authority that goes beyond traditional and contractual understanding of authority.

13	Julia Black (2008, 2017)	Develops a concept of liquid authority in direct contrast with formal-legal, constitutionalized & solid authorities. Analyses epistemic authorities in global governance.	In her case, the problem of authority refers to not looking at how authority functions in the absence of formal-legal & solid bases of authority in global governance. Making sense of authorities beyond contractualism.	Sociological understanding of authority's legitimacy: in this context, authority's social credibility and acceptability matter. Authority & legitimacy are relational, situational, & endogenously produced. Subject to constant legitimation cycle (gaining, developing, enhancing, or repairing legitimacy) in the absence of a formal legal framework. Making use of legitimacy narratives.	Liquid authority concept that goes beyond the formal-legal & solid authorities. Takes a sociological approach, because liquidity of authority is based on social & political acceptance rather than formal legal rules in global governance. There might be some formal documents constituting that authority, but they are not necessarily backed by law.
14	Hristo P. Todorov (2010)	Provides a relational concept of authority: someone has authority only to the extent that others are willing to recognise it. Provides a wider understanding of authority by including alternative authorities (epistemic authorities) also in consideration.	To him, the problem of authority is fixation on the political forms of authorities. This results in making sense of non-political (epistemic) authorities in global governance.	Explains modern legitimation grounds of authority: Someone has authority only to the extent that others are willing to recognise it. Comes close to natural or rational voluntary deference concept of authority: authority exists only if we are ready to accept another's opinion to be true & another's judgement to be right out of inner conviction.	He provides a wider understanding of authority by going beyond the political forms of authorities and including epistemic authorities in understanding the nature, functions, implications, and grounds of legitimation of different authorities in global governance.
15	Kate MacDonald & Terry MacDonald (2017)	Provides liquid authority concept in institutional context based on normative principles, where institutional dynamism inspired by its informality, multiplicity & other structural properties makes authority liquid.	Their problem of authority refers to a one-size-fits-all prescription for legitimizing inter- and transnational authorities. They believe legitimising mechanisms should vary	They focus on the institutional mechanisms (public accountability & pragmatic experimentalism) for attaining liquid authority's political legitimacy. They also address the causal mechanism between changing authority structures & legitimation	They understand authority on sociological grounds as institutionally induced deference.

			with differing authority structures and relations.	sources by resisting 'one-size-fits-all' institutional prescriptions for legitimizing inter- and transnational authorities.	
16	Ole Jacob Sending (2017b, 2017a)	Liquid Authority Concept: Argues that authority in global governance should be analysed more on liquid lines than solid to make sense of transformation of authority over time.	The problem of authority comes from sticking to traditional concept of authority based on formal-legal grounds only. He argues that the conventional view of authority as contractual & solid is of 'limited analytical value', and is often insufficient & misleading in accounting for the emergence of new and beyond political forms of authorities.	Authority's legitimation comes from authority's recognition attained through the naturalisation & universalisation of their particular interests on normative grounds, producing legitimation beliefs through which deference is achieved.	Provides a relational concept of authority combined with the analytical lens of studying actors' search for recognition or legitimation sociologically.
17	Birgit Peters & Johan Schaffer (2013)	Reconceptualizing global governance back in authority: The reconceptualising of global governance in authority leads us to think of global rule and arrangements in empirical and normative terms, according due and independent significance to the concept of authority.	He argues that, though many scholars now apply authority to global governance or transnational issues, they make use of partly incompatible concepts of authority, particularly on how it is established in an international context, and how it relates to legitimacy	Does not provide any scheme of legitimation for authority.	Analyses some major conceptions and frameworks of international authority in order to signify 'turn to authority' in global governance.

18	William E. Connolly (1987)	Provides a discourse on modern authority in contrast with pre-modern authority. He argues that a mode of authority appropriate to modernity must be appreciative of its ambiguous character.	He argues that the issue of authority arises from the fact that the ambiguity of authority is not appreciated in the authority discourse. The problem or issue of authority arises from the modern discourse about authority, which attempts to avoid the dangers and unknowns that come with authority.	Rational voluntary deference model: Accept & obey authority because we acknowledge that the life we share in common requires commonalities of action in a variety of settings, which are best achieved through authoritative coordination. This means authorities in this sense are legitimate in occupying certain positions to give decisions, verdicts, & directives in their area of competence.	Draws a comparison between modern & pre-modern authority, with an unjustified hypothesis, mode of authority appropriate to modernity must be appreciative of ambiguous character of authority.
19	Richard B. Friedman (1990)	Relational concept of authority based; firstly, on the will & judgement of another under the notion of a surrender of private judgement. This rests on epistemological grounds of superior knowledge. Second, the recognition & acceptance of criteria for deciding who can be an authority. A response to a predicament of disagreement & lack of coordination. These two concepts reflect on: 'to be in authority' and 'to be an authority'	'Controversial meaning of authority'. He argues that the concept of authority is controversial because of dispute over authority relation with power, legitimation, & obedience and due to different approaches in conceptualizing it in the authority discourse	Legitimacy is based on a shared recognition of entitlement. Legitimacy of authority is driven by two types of belief in authority relation; a belief that the person is entitled to rule (deferential obedience/legitimation) and a belief in the correctness of the authority's commands or utterances (reflexive legitimation)	Notion of 'surrender of private judgement' is an old command-&-obedience framework. He does not believe that it is wrong to use authority for legitimate power or legitimate use of force, conflating authority with coercion.

20	Steven Lukes (1990)	Provided Relational Concept of authority in contradiction from other forms of power. Looks at the question of authority from both analytical and normative perspective	Identifying authority is a complex process, involves a lot of interpretation & is inherently perspectival.	Some kind of mutual recognition and normative arrangement is accepted by both parties – ruler and ruled. Or mutually recognised relationship giving one the right to command or speak and the other the duty to obey.	Same old command & obedience framework, giving one the right to rule and the other the duty to obey
21	William E. Connolly (1987)	Provided Modern Authority Concept: A mode of authority appropriate to modernity. Modern authority is future-oriented and is more respectful to human dignity than previous authorities	He calls it 'the issue of authority'. To his understanding, the problem or the issue of authority arises from the modern discourse about authority, which attempts to avoid the dangers and unknowns that come with authority. It resembles Raz's (2006) focus on good and successful authorities rather than what authority is.	Not Given	Modern authority concept going beyond the ideal and consensual authority understanding

22	Tallberg et al. (2018)	International authority understood as 'institutional regulatory arrangements beyond the confines of nation-state'.	To them the problem of international authority arises from the lack of broader & wider understanding of authority and its legitimation in global governance	Takes normative-sociological approach to authority legitimation question on three fronts: sources of legitimation, practices of legitimation & de-legitimation, & consequences of legitimation. Answers the question of whether, why, how & with what consequences GGIs gain, sustain, & lose legitimacy.	Their empirical approach to legitimacy is problem-driven, rather than inspired by any theoretical agenda or framework. Thus, it goes beyond the existing state of the art and applies a comprehensive & comparative sociological approach to GGIs' legitimacy
23	Janne Mende (2020)	The concept of multiple authorities: takes a triadic approach in analysing the constant & interlinked components of authority: power, legitimation, & reference to public interests. Applied to a case study of business authority & human rights	To her the problem lies in the two-pole constellation of public & private authority, which does not sufficiently capture other forms of authorities (like business authority) which do not fall neatly either under public or private constellation in global governance	Legitimacy as a causal component of authority: authority may fall or rise as legitimacy increases or decreases.	Tried to extend two-pole constellation of public & private authority to three-pole constellation by including business authority as a third constellation in order to sufficiently capture the nature & forms of authorities in global governance.

## Chapter 3: Research Methodology & Conceptual Framework

### 3.1 Research Methodology:

This study employs a mixed-method approach to examine the research problem. It makes use of the deductive theory-testing approach based on my study's hypothesis, in combination with limited use of the inductive theory development approach with close reference to the empirical observation of the multiplication of authorities. This warrants a broader conceptual framework of authority in order to make sense of the multiple authorities in global governance. The study fundamentally employs the deductive theory testing and hypothesis proving method to provide a broader, better, and more encompassing understanding of authority relations against pre-defined and established conceptual frameworks, theories, or models of authority.

With the deductive theory-testing method, the study basically tries to unravel the problematic characteristics of existing state-centred, solid, and contractual conceptual frameworks/models of authority in global governance. On the other hand, my study also makes limited use of the inductive theory development approach, in arguing that the conceptual framework of authority in the face of new authorities in global governance should be broadened and its analysis must go beyond the typical contractual, command-and-obedience, solid authority understanding strictly classified in the public-private authority constellation.

As the study is focused on analysing authority in global governance beyond contractualism on a broader level, this study extensively employs the theory-testing deductive method to critically analyse the traditional, contractual, command and obedience frameworks of authority against the core hypothesis of my study. This hypothesis is that the conceptual framework of authority is problematic, narrow, and misleading, for it fails to capture the new and multiple authorities in global governance.

This study, through a qualitative analysis method, tests the efficacy of traditional conceptual frameworks through selected case studies of new authorities which go beyond the public-private constellation and do not exclusively function with command-and-obedience arrangements. Based on the same case studies after having analysed the efficacy of the existing conceptual frameworks of authority, the inductive theory-building approach is employed in arguing how new authorities can be made sense of in global governance and how they can be



made more accountable and more globally responsible, like state authorities and state-delegated authorities.

My study, in line with the requirements of the research problem, is designed in such a way that understanding of the analysis of the exercise of authority in global governance moves from general to specific (from the concept of authority in general to international and new authorities and particular case studies). The study, therefore, also makes limited use of the inductive theory-building approach to empirically analyse new authorities based on thematic case studies (from the modern global governance period). The case studies include: a case study of outer-space research and exploration private companies; a case study of big tech companies; and a case study of private military security companies (PMSCs). These case studies are selected under the following considerations:

- The case studies selected aim to reflect the study's hypothesis that there are new authorities which are private but perform public interest functions.
- The case studies selected aim to reflect the informal and non-legal personality of authorities.
- The case studies selected reflect the wide array of 'production of standard instruments' (Bogdandy et al. 2008, p. 1382) for the exercise of public authority and their different consequential character.

As the focus here is on the concept of authority and the exercise of authority, so my study focuses more on the operative and legitimation/legal side of these authorities than on its infrastructure side. More specifically, the case studies in analysing the exercise of public authority focuses on the following three perspectives. First, they provide procedure-focused understanding, which means elaborating on their actions and functions, paying attention to the instruments which produce external effects. Second, the analysis of thematic case studies tends to focus on the legal qualification of the instruments, which have external effects and consequently lead to regular serious legitimacy concerns. Finally, they take into account a multilevel perspective, which involves cooperation with other organisations or governments. The cross-cutting analysis built on these thematic case studies is used to address topics such as global responsibility, human rights accountability, legitimacy, and legality principles under the big tech and PMSC case studies.

Highlighting something that is hidden in predominant discourse or in the available frameworks or models of authority is demanding. Keeping up the task at hand, I justify the use of the 'interpretive comparative historical analysis' (Yanow and Schwartz-Shea 2006) method for tracing and understanding something that is hidden in discourse. It helps me to inductively identify and interpret meanings, causal relationships, and the ways new realities are constructed, as well as latent meaning, gaps and given knowledge.

At the same time, when dealing with large and varied amounts of data, I need a method that allows deductive sorting of the data, developing patterns, and drawing relations/comparisons. In this regard, I find a more recent approach in IR very useful, which seeks to combine positivist and post-positivist approaches, making use of 'interpretation' and contributing to 'explanation' at the same time. Although the terms are not interchangeable, in practice there is considerable overlap between the two. For instance, those who claim they explain behaviour also interpret meaning, and those who interpret language also explain action. I believe that such integrative approaches are best suited to interpreting and explaining the problematic characteristics of authority in global governance.

### **3.2 Process-Tracing Analysis Method:**

My study, as seen above, works around some significant hypotheses. This calls for a tool that is suited to the job of hypothesis testing. In this regard, process tracing has grown in popularity in the field of qualitative research as a valid and substantial tool for hypothesis testing (Ricks and Liu 2018). To this end, my study here makes use of one particular type of process-tracing and analysis method – theory and hypothesis testing. Because the study focuses on the systematic link between an outcome of interest and an explanation based on the rigorous assessment and weighting of the evidence for and against causal inference. By employing process tracing in this fashion, the role of theory and the empirical testing of a hypothesis is emphasised.

For conducting a study based on process-tracing or hypothesis testing, certain concrete steps for a textbook approach are suggested in Ricks and Liu's (2018) practical guide on process-tracing research design. However, to go strictly by the process-tracing steps would be a textbook approach, which my study is not going to do; neither is it needed, in particular with regard to accurately establishing a timeline for sequencing events. The intention behind explaining the three steps of process-tracing below is to just draw attention to my broad study

design. Based roughly on these three steps, my study adopts a research design that moves from a general and historical understanding of authority as a concept to new authorities, based on my theoretical expectations and hypotheses identified in the introduction chapter. Along the way, it includes analytical chapters and case studies, reflecting on the concept of authority and its actual working in different periods (as our established timelines). It also brings up in the analytical portion the rival hypotheses or arguments from the existing literature to further clarify and strengthen my study's arguments and hypotheses. These aspects are briefly mentioned in the steps below.

**Step 1:** Define my theoretical expectations and identify hypotheses:

My study also follows the maxim, 'Theory saves us all' (Ricks and Liu 2018, p. 842). Therefore, the research design and empirical analysis for causal analysis in my study are theoretically guided. Based on my theoretical expectations, identifying testable hypotheses is then the first step in a good process-tracing method (refer to the core hypotheses of this study in the introduction chapter). The most important aspect of process-tracing is that it does not limit one only to a single theory of interest. Rather, it allows and instructs the user to juxtapose rival explanations or theories that one intends to test. This aspect is assured by including also the scholarship on authority and global governance, which tends to argue differently than my study's line of argument and hypotheses, as in Arendt (2017, 1977), Lake (2010), Leipold (2015), MacDonald and Lake (2008), and Orford (2011). It is important that the identified main hypotheses are evaluated alongside rival scholarship and scholarly arguments to highlight the shortcomings of the existing and dominant models or conceptual frameworks of authority in the study of governance, as against my theoretical expectation. This will broaden the understanding of authority by going beyond the contractual and solid frameworks of authority in order to make sense of new and multiple authorities in global governance. I believe the process-tracing analysis, pitting my observation against both my primary theory and an alternative theory such as Hannah Arendt's claim (2017, p. 490) that 'authority has vanished from the modern world' gives the study solid theoretical ground to stand on.

**Step 2:** Establish Timelines: Sequencing Events

The second step in the process-tracing analysis is to collect empirical data through case studies or by sequencing events. My study makes use of both sources of empirical evidence. However, in all this process, the challenge is to decide on which case studies should be included

and how far back in time one should go to achieve one's cause. In this regard, my study adopts a very simple but logical approach, by including those case studies which directly and very plainly represent my thought process and provide a 'face validity' test for my main argument. This argument is that the conceptual framework of authority in global governance is problematic and that there are new and multiple authorities on horizon, which it fails to make sense of or capture with its narrow command-and-obedience approach. My study's central hypothesis in this sense guides me to include case studies on new authorities. This includes a case study on private military companies and their authority with reference to international human rights. Other case studies include outer-space research and resource exploration, and a case study of big tech companies with reference to state-centric global governance.

Alongside these single and specific case studies, I also establish a timeline or sequence of events which no doubt serves the same purpose as above but addresses another related and causal kind of hypothesis: that authority, its nature, functions, and sources of legitimation have changed, shifted, and even developed over time. I refer to this as a causal hypothesis because, with the turn of events, authority and its nature, functions and grounds of legitimation have changed. This leads to my resultant hypothesis: with the multiplication of authorities in global governance, there are new and multiple authorities at play in modern global governance, which go beyond the simple command-and-obedience framework of solid authorities, and which cannot be understood under a simple two-pole public and private authority constellation. This hypothesis is supported by specific case studies, as mentioned above.

Therefore, today's authority in global governance is different from earlier conceptions of authority (refer to the discussion of pre-modern authority in Chapter 4, section 4.1), both in the context of the state or in the wider settings of empires. To clearly support this hypothesis in time, I have identified or sequenced specific events from a broad timeline, stretching from the ancient and medieval world down to modern times, relating to global governance authority structures and institutions. In going back in time and selecting some critical historical junctures, I try to revisit my hypothesis and see if the study is missing any obvious probable cause for the identified outcome, i.e., multiplication of authorities. This also allows a researcher to verify if the events in question fit the hypothesis.

**Step 3: Identifying Alternative Choice Theory and Counterfactual:**

The next step in process-tracing analysis is to identify alternative choices or events that could have been made, or should have been made, or could be made. This step is not applied strictly in the given sense in my study. Rather, it is taken more in the sense of alternative and innovative authority scholarship in the field of global governance to make sense of new authorities, or what (Mende 2020) calls multiplication of authorities. This step is more in line with my study's critical literature review section, where a table of the existing scholarship on authority is drawn, to show which alternative innovative theories or approaches to the study of authority in global governance provide a broader understanding of authority in the face of the emergence of new authorities. In global governance scholarship (which is critically & extensively reviewed in the literature review chapter of this study) highlights the problem of authority arising from a conceptual framework that is confined to a contractual, state model of the command-and-obedience arrangement of solid authority. Some scholars who provide alternative choices are Zürn (2018), Krisch (2017) and Mende (2020), who propose, respectively, a reflexive conception of authority, a liquid conception of authority, and the need to go beyond the traditional two-pole constellation of public and private authority to capture the multiplicity of authorities in global governance. These alternatives are theoretically and empirically grounded, which supports my hypotheses.

In this vein, I also through the process-tracing method, identify the counterfactual outcomes throughout my study that would have happened or could happen if an alternative choice were employed. For instance, with the changing global governance landscape, the legal instruments of global governance could have been adapted to accommodate the new authorities, rather than just regulating states. However, according to Ricks and Liu (2018, p. 844), 'counterfactuals are heuristic devices that enable us to identify hypothesized outcomes and thus potential data to collect, but they are not evidence per se.' Nonetheless, they are important to the process of theory testing because they establish expectations about what researchers could encounter during their data collection process. Thus, the initial plan for data collection should be designed based on these three steps.

**Step 4: Finding evidence for Primary Hypothesis & Rival Hypothesis:**

After defining my theoretical expectations and identifying hypotheses, sequencing events, and identifying alternative choices and counterfactual outcomes, I jump into the data

collection portion. Now, in data, certain evidence types can at the same time support one's proposed theory or hypothesis and eliminate a rival one. However, these cases are not very common. Therefore, the process tracing method suggests that researchers should increase their evidence pool to establish that their hypothesis is the best fit from a set of possible explanations. This is what my study tries to accomplish in the extensive literature review chapter.

The purpose of also bringing rival and directly contrary arguments into consideration is to dismiss as many explanations as possible, leaving only one hypothesis as the most likely. The best example of this is a critical discussion of Hannah Arendt's rival hypothesis, 'authority has vanished from the modern world' (2017, p. 490). Although her account and line of argument stands opposed to my study's hypothesis – there are new authorities in global governance – my study often refers to her account, because it clarifies and even to some extent supports my study's argument that authorities have changed over time. In this sense, her argument can be correct and support my study's argument that traditional authorities have vanished, and new authorities have appeared in global governance; I consider it more a sifting process.

Wherever, possible, I look for opportunities to include a rival argument or a rival conceptual framework of authority in the existing literature in order not only to dismiss as many explanations as possible but also, at the same time, to strengthen my hypothesis as the most plausible one. But if at some point I find evidence to the contrary, I acknowledge it and do not reject it, because sometimes, despite being apparently contradictory, the rival hypothesis explains the research problem at hand better and more clearly than the primary one. Again, this is the case with Hannah Arendt's (2017) hypothesis that authority has vanished in the modern world, by which she means the traditional, solid command-and-obedience authority. This argument and hypothesis of hers, although contrary to my study, strengthens and supports one of my fundamental arguments: that there are new authorities on the horizon which go beyond the traditional, solid command-and-obedience authority arrangements. Therefore, we should look beyond traditional command-and-obedience contractual authority to make sense of new authorities.

## **Conceptual Framework**

My study has two main arguments; first, that a very narrow and state-centric understanding is drawn upon the concept of authority in global governance, confining it to Westphalian paradigms of global governance and command and obedience framework. Second, most scholarship on authority and global governance ignores the fact that the grounds and sources of authority have shifted over time, giving way to multiple and new forms of authorities. Based on these two arguments, I justify the use of the 'interpretive comparative historical analysis' method (Yanow and Schwartz-Shea 2006) for tracing and understanding something that is hidden in discourse. It enables a researcher to inductively identify and interpret meanings, causal relationships, and the ways new realities are constructed, as well as latent meaning, gaps and given knowledge.

Therefore, in my study, I attempt to analyse international authority beyond the traditional contractual model of authority, by building upon an alternative understanding of authority; one based on deference, rather than command.

In my study, the empirical approach to authority, its nature, functions, and legitimacy in global governance is problem-driven, rather than dictated by a particular theoretical agenda or methodological preference. The problem of international authority as defined in this study directs me in adopting a particular empirical approach or shift from the existing conceptual framework.

### **3.3 From Philosophical Normativity to Empirical Normativity of Authority in Global Governance**

This study in analysing authority on a wider level in global governance employs empirical and sociological normativity instead of the usual philosophical normativity. The latter is a dominant approach based on legal and theoretical judgements about authority, right to rule, and legitimacy. It is a top-down approach, where beliefs, theories, and legal opinions held by political theorists and rulers give meaning and justification to authority's claims and legitimacy. It commonly refers to a right-to-rule principle, which is based on authority's conformity to certain philosophically formulated values and principles, such as democracy, justice, and fairness. Therefore, the normative approach adopts a philosophical-reflective methodology, where recognition and legitimacy of authority comes from a theorist's rational argumentation about philosophical issues, not from the opinions of citizens (Agné 2018).

In contrast, using a sociological-empirical framework in understanding authority and its legitimacy is based on analysing the belief or perception of a given audience that an exercise of authority is appropriate (Tallberg et al. 2018). Therefore, normative and sociological frameworks of inquiry pose different questions. An empirical normative framework would be more focused on the question: against what ethical standards or philosophical values and principles can authority claim legitimacy and its legitimacy be evaluated? To what extent do these authority/governance structures meet these standards?

In contrast, a sociological approach to authority would typically inquire more on empirical grounds: how, on what grounds, through which processes, and with what consequences is authority and its legitimacy gained, maintained, contested, and lost in people's perception and beliefs? It shifts the authority perspective from the ruler to the ruled, by examining how multiple audiences, ranging from elites, citizens, and states down to non-state actors, perceive the exercise of authority as appropriate and rightful, without any reference to any philosophical or political normativity.

Most of the research on authority and legitimacy in global governance has been normative, focused on simple input and output sides of global governance. On the input side, participation, transparency, and accountability are examined; and on the output side, an assessment is carried out of the extent to which global governance institutions stand up to assessments of efficiency, justice, democracy, and fairness. Authority on sociological empirical grounds may vary across time, audiences, and between institutions, a fact which is justly presented in my study through my hypothesis that authority is a social fact and therefore subject to historical changes and through my case studies from Ancient, Medieval, and present-day global governance periods. Sociological normativity is a study approach that focuses on socio-political processes and empirical changes through which authority and legitimacy are gained, maintained, contested, and lost. It looks at people's beliefs towards an authority's claim, which leads either to recognition and legitimation or criticism and de-legitimation of authority in global governance – a bottom-up approach (Tallberg et al. 2018).

Since my study is making use of the deference model in analysing authority, looking at both natural and rational voluntary deference to authority in global governance, it makes more sense to take a sociological normative approach on empirical grounds in analysing how, why, and when authorities in global governance are recognised and accepted by their subjects



beyond the contractual and command-and-obedience frameworks. This is an improvement on the philosophical normative approach which provides the same old de jure concept of authority, based on legal, contractual, or delegated grounds. It does not account for the new authorities that have emerged and grown beyond the Westphalian paradigms of governance and the frameworks of solid political authorities. Therefore, the theme and purpose of my study warrants the use of the **empirical-normative-sociological approach** in making sense of authorities whose exercise of authority goes beyond state and inter-state relationships and cannot be understood under the traditional public-private authority constellations. It provides a chance to look meaningfully into the nature of the existing authority structures and how they function, as opposed to the focus on how and what authority should be in the case of the philosophical normative approach.

### **3.4 Shifting the Focus from Formal ‘Delegation’ to the ‘Development’ of Authority Over Time: A Relational Perspective of Authority**

International Authority is Marked by an ‘Evolutionist Pattern of development’. According to Max Weber, Authority is a social fact and is therefore subject to historical changes (Weber 1978). In the light of Weberian arguments on the nature and functions of authority, I build the theoretical foundations of my study of the international authority, arguing that the functions and sources of international authority have shifted over time.

However, much of the available scholarship on international authority focuses on the ‘power delegation from states’ paradigm to identify, map, and explain authority, as well as to frame questions on its legitimacy and accountability (Buchanan and Keohane 2006). The formal delegation of authority approach explains mostly those inter-governmental organisations or state actors which are formally institutionalised and are usually path-dependent (e.g., UN and the Bretton Woods institutions) or informal and un-institutionalised (e.g., G20/BRICS), but it fails to explain the other group of international authorities – the non-state private actors.

This especially applies to those which cannot be neatly classified as public or private and exercise authority beyond the state ambits. If there are multiple authorities in global governance with both liquid and solid characteristics, then the focus on just traditional, solid, delegated aspect of authority is partial and misleading. Such a study might show that there is no authority, when there is actually an authority, but not a solid and command-oriented one, as in the case of rating agencies and business corporations. It may locate authority in one area

when, in fact, it is found elsewhere, as in the case of the IMF, which competes for authority with credit rating agencies – informal and private bodies. Therefore, understanding what kind of authorities exist in global governance, where they reside, and how consequential and legitimate they are, are empirical questions, with the possibility that they may be more solid in some areas and more reflexive and liquid in others; strong in some issues and weak in others; and in some cases more or less closely linked to states (Krisch 2017).

An empirical inquiry into these multiple authorities and their legitimacy and effectiveness cannot be carried out under a 'formal delegation', contractual, or formal legal powers framework. It needs to be brought into the broader perspective of a recognition and deference model to explain the new authorities (with reflexive and liquid characteristics) that have developed in the global governance structure over time. Therefore, if there are authorities in global governance which are actually different from contractual, solid command-and-obedience forms, then we need to study social processes, rather than just formal delegation, to understand global authority structures.

This implies that we need to shift the focus from formal delegation to the development of authority over time, its shifting nature and functionality, challenges, and sources through social and institutional interactions (Sending 2017b). In this vein, my selected case studies from ancient, medieval, and modern global governance periods traces the historically shifting forms of authorities more on sociological grounds in order to make sense of these newly evolved global authorities. To bring this historico-sociological inquiry of authority in global governance into dynamic relation with the past, this study will take on a historical-logical reconstruction of authority in the past (refer to Chapter 4 section 4.1 on pre-modern authorities).

It is a broader hypothesis of the study, that authority will appear differently in different international social contexts, it will act upon different sources, it will create a different relationship between the rulers and the ruled, and will give shape to different and sometimes even to new international structural and institutional arrangements (cf. Yanow and Schwartz-Shea 2006).

### The Criteria/Considerations for Case Studies:

- The case studies should possess elements of rule going beyond geographical, national, cultural, and religious boundaries and the shared goals and norms in terms of common global good (in the case of modern global society), or shared values and religious beliefs in the case of ancient and medieval societies.
- Case studies feature historically significant episodes of cultural change, power redistribution and the rise and fall of different seats of power, because it is during these times that the problem of authority becomes most evident (in terms of struggles over legitimation and location of authority).
- The case studies should represent my thought process and provide a ‘face validity’ test for my main argument that the conceptual framework of authority in global governance is problematic and that there are new and multiple authorities on the horizon.
- In the light of these determinants, my case studies so far meet these considerations, as the following table briefly shows.<sup>5</sup>

Table 3: Case Studies

Case Studies	Historical Periods	Problem of Authority most Evident: Shocks & Shifts
<b>Pre-Modern Authorities: A case study of traditional authorities</b>	Ancient world	Rise & expansion of the Roman Empire; Period of Cultural & Political Changes
	Medieval world	Fall of Rome; Eastern Orthodox (Byzantium) & Roman Catholic Church Rivalry; Medieval Christendom in rivalry with Muslim world (Ottoman Empire); Competition between secular & religious rulers;
<b>Modern World Global Authorities: A case study of new authorities</b>	Modern world: Post WWII	The multiplication of authorities: rise of the US to dominance; United Nations; emerging powers; back to Great power competition; global security crisis. Thematic case studies on different authorities in global governance: Case studies of the UNSC & WHO A case study of Big Tech Companies A case study of Private Military Security Companies A case study of Private Outer-space Companies

<sup>5</sup> I have selected these cases from Adam Watson’s seminal study on *The Evolution of International Society* (Routledge, 1992).

### **3.5 Alternative Model of Authority: Building on the Deference Model to Develop an Account that Goes Beyond the Solid and Contractual Forms of Authority.**

Authority is widespread and has evolved over time into different forms in global politics and international relations, but its analysis remains confined to a particular solid or contractual understanding, based on command-and-obedience arrangements. This study tries to shift the conceptual framework of authority to an alternative model, the deference model, in order to broaden its scope to include liquid and reflexive characteristics of authority<sup>6</sup>.

When states and societal actors recognise, accept and respect obligations formulated by international and transnational<sup>7</sup> organisations without those obligations being forced upon them, even though they run counter to their interests, we observe rational voluntary deference upholding order. This kind of deference is often described with terms like 'global common good' and 'belief in the possibility of international authority'.

The sources of recognition or legitimation of authority can be different and many. The deference model has recently begun to gather traction in global governance studies, with an attempt at a broader conceptualization of authority. The deference model is understood as the ability to induce deference in others or as 'deference of one's own judgement and choice to a recognised authority without being necessarily forced to do so' (Zürn 2017, 2018; Krisch 2017; Peters and Schaffer 2013). Authority as in 'ability to induce deference' is a broad concept; therefore, it needs to be distinguished from other forms of power or influence (particularly power and persuasion). Deference comes with some level of content-independence, which is different from acts that result from coercion or substantive persuasion. It leads to a relation that is broader than a mere one-off exercise of power, in that the ability to induce deference is claimed to be based on (logically prior) recognition of an actor or process as authoritative (Krisch 2017).

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<sup>6</sup> Liquid authority refers to authority's high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and control in global governance. It tends to undergo changes and acts strong in some issues and weak in others. Under a liquid conception, authority is understood in the sense that it flows, does not have a fixed shape and is difficult to explain under predefined frameworks and within the two-pole public-private authority constellation. The reflexive concept of authority (Zürn 2018) refers to authorities which are marked by a constant legitimation cycle, and which do not draw their legitimacy from traditional sources like the right to rule or any other contractual or de jure arrangements.

<sup>7</sup> 'International' refers to state arrangements or has to do with the continuing existence of nations, while 'transnational' goes beyond the existence of nations or state arrangements (non-state private international actors)

One typical aspect of authority under the deference model is, that 'recognition cannot be based on an attitude or act of the individual subject, such as delegation or reflexive acceptance, but it will usually also have a social dimension' (Zürn 2018). The bottom line in the deference model is that the recognition or legitimation of authority comes through a social practice that does not necessarily depend on the attitude of the subjects or addressees of authority. Studying authority under the deference framework, rather than the contractual or command model, broadens the conception of authority, allowing for different forms of authorities to enter the picture. It helps in understanding the sources and functioning of multiple authorities in global governance, thus extending the scope of study to sources of legitimation that are not based on delegation, social contract, or other traditional notions like the right to rule.

A turn to the deference model of authority aims at analysing the emergence, institutionalization, and transformation of authority over time, resulting in the multiplication of authorities beyond the state. Nico Krisch (2017) suggests that authority in global governance should be analysed more on liquid lines than solid. Likewise, Sending also builds on this conceptualization and agrees that the conventional view of authority as contractual and solid is of 'limited analytical value' (Sending 2017b, p. 311).

Shifting conceptual frames are based on a distinction between authority as a descriptive and an explanatory concept. Those who employ solid or contractual authority, as in command-and-obedience arrangements, aim at describing or defining the variety of actors and institutions as having solid or contractual authority in the sense of providing political order, giving commands, and creating formal obligations in exchange for obedience from the ruled. The UNSC and the International Criminal Court have elements of such authority. However, using such an approach in an analytical sense to account for the emergence and possible transformation of authority is insufficient and often misleading. For dealing with such a problematic characteristic of the conceptual framework of authority, this study makes use of one of my fundamental research questions; how consequential, not consequential, or different consequential authority is in global governance. To address our research problem of making sense of new authorities in global governance through that question, we are better served by an analytical conceptual frame of authority which can explain authority's changing forms and dynamism.

Analysing authority beyond contractualism refers to my attempt to explain how authority (characterized by both command and deference) has emerged, developed over time beyond the state and is now at play in global governance structures. Like Lake (2010), Ole Jacob Sending (2017b, p. 312), also makes use of the relational authority concept on sociological grounds. But his relational authority concept is coupled with the dynamism of authority – a product of actors' search and struggle for recognition in 'already hierarchically organized social spaces'. In this sense, Sending's (2017b) approach, unlike Lake's, does not end up using the same old social contract framework. His relational authority, combined with the analytical lens of studying actors' search for recognition or legitimation sociologically, can take different forms of authority without being confined to predefined sources or conceptual frames (based on formal-legal, contractual, delegated, expertise or moral grounds). This aspect of authority as being developed or transformed over time can be illustrated with the empirical analysis of the WHO, and the liquid foundation of solid authority (manifested in different forms and sources) can be presented with a case study of the UN Security Council (Sending 2017b).

Both global and domestic authority may be described as both 'solid' (singular and institutionalised), and as liquid (multiple and dynamic). But to account for both types of authority, we need an analytical concept of authority that highlights its dynamism and thus its liquidity. This is because authority refers to a relationship between actors, and we often assume that relations between actors remain fixed. In this regard, the dynamism of relations between the (multiplicity of) actors should take centre stage to account for it.

A similar argument is made by Ian Hurd (2008) in his concept of authority as a social relation. This is particularly important for efforts to account for the way authority may emerge and become institutionalised (and thus more or less solid), as well as how it may be transformed (Sending 2017b, p. 312). For example, state authority is the most 'solid' and institutionalised form of modern political authority, but to account for its establishment and evolution over time, we surely require empirical analyses, which are hard to come by if we apply the concept of already established solid authority frameworks (contractual model). Therefore, to account for the changing forms of even solid authority in the face of different modes of protests and mobilisation in modern states, we need to bring dynamism and liquidity to centre stage, as Krisch argues (2010, 2017).

By looking at international authority beyond the state and contractualism, this study aims to shift the conceptual frame from the traditional to the deference model of authority, based on its liquid and reflexive characteristics to gauge the effectiveness and the degree of consequentiality of these new forms of authority in the global governance structure. In this regard, Zürn (2018) provides a useful account of authority under the deference model and nicely leads me to a debate on the 'problem of international authority', which refers to the limitation of the conceptual framework (employing predominantly a model of solid authority borrowed from the domestic realm of state government).

### **3.6 Going Beyond the Westphalian Paradigms of International Authority: Understanding the Multiplication of Authorities in Global Governance**

There is widespread criticism in global governance research and in human rights circles that new authorities ranging from business to big tech companies and corporations like the private outer-space corporations are not adequately captured in legal, political, or even conceptual terms to make sense of their nature, functions, grounds of legitimacy and behavioural implications. They enter into the ambit of public authority because they perform public-interest functions, despite being private. They have no legal personality when compared to legal state delegated authorities, yet they produce a wide array of standard instruments for the exercise of public authority.

The level and magnitude of their authority in the global context is not only huge but also non-conventional – which sometimes cannot be encompassed by national law and authorities alone, as in the case of Facebook. This gets trickier when one looks at these new authorities on the grounds of global responsibilities or common good, as in the direct (beyond the state) human rights responsibilities and obligations of business corporations. It is here that one observes a huge gap between the growing powers of corporations and their limited human rights responsibilities in the face of the state-centric international human rights framework. Under international human rights law, states are obligated to respect, protect, and fulfil human rights. But corporations are exempted from any direct or indirect human rights obligations, especially in the context of positive responsibility for protecting and fulfilling human rights.

The case is similar with outer-space governance, which speaks of states' responsibilities in outer-space research and resource exploration under some treaties, but there is no mention

of any direct global responsibilities for corporations engaged in private outer-space research and resource exploration. Therefore, these business corporations and some other new authorities which have resulted in the multiplication of authorities in global governance are not captured by the existing state-centric global governance framework. In this vein, my study beyond contractualism proposes to go beyond the Westphalian paradigms of international authority, be it in human rights protection or the governance of outer-space, in order to make sense of these new authorities across different global policy issues.

Operationalising authority by means of analysing the triadic relationship of power, legitimacy and reference to public interests, this research will identify different forms of authority along the lines of institutionalisation, legalisation, and participation. Such an approach will enable the concept of authority to be multiplied between and beyond public and private authority, to adapt to the requirements of our modern-day global governance in line with democracy and international human rights.

The next section, `Analysis and Case Studies` begins to search not only for authority relations but also for new authority relations in global governance by including some intensive thematic case studies, which establish claims about the existence of authority and the exercise of international public authority.



## Chapter 4: Analysis and Case Studies

Traditionally, and by definition, authority is rightful and legitimate rule, where an authority A commands the ruled B to obey or adapt to A's rules. It shows that A has a right to issue such commands and there is a corresponding obligation on B's part to abide by A's rules. In such an authority relation, marked by command-and-obedience arrangements, the individuals are not given a choice whether to comply with orders or not, but rather they are punished or disciplined if they defy the established order. For instance, drivers exceeding the speed limit accept the consequences of the law when caught, because they acknowledge the state's right to rule. Thus, the right to punish in the case of non-compliance rests on the collective acceptance of the legitimacy of authority. On a national level, such legitimacy is traditionally acquired through agreement and consent under a social contract, where a ruler promises protection and welfare in exchange for people's obedience. This is how the state and its institutions exercise authority with the element of enforcement and punishment in case of breach of rule.

However, on the global level, the establishment of authority, its functions and legitimation become complicated. Authority in global governance rests on its wide acceptability plus a sense of social purpose, which is fuelled by its pursuit of normative principles like the global common good. Authority in global governance does not only have different grounds of legitimation, but is also exercised in different ways from the traditional, contractual solid authority of states based on command-and-obedience patterns. Here, authority comes in different forms; it does not work exclusively with commands to do X, but rather it also includes suggestions, interpretations, and requests to consider Y.

In this sense international authority does not force or punish subjects into compliance, but rather it rationally, indirectly, usually through the use of expert knowledge and moral integrity, brings them around to compliance with international rule. Across different types of issues, authorities in different capacities (political authorities: UNSC; institutionalised epistemic authorities: IAEA; and NGO-based epistemic authorities: Amnesty International), have different authority functions and use different modes of legitimation. Unlike contractual solid authorities, they are subject to constant performance checks (a reflexive characteristic), which keeps them in a continuous legitimation process.

In global governance, any member state can deny any obligation to comply with an authority's regulation, but it will nonetheless recognise the authority, just to be part of the global governance structure and not to stand alone from the rest. Therefore, the larger community's backing of authority also indirectly compels any individual state to continue to recognise it. The EU, for example pays fines for its GMO policy as a sign of deference and acceptance of the WTO's authority, without feeling obligated to follow its guidelines by changing its own production and agricultural policy (Zürn 2017, p. 265).

From the collective standpoint, compliance with authority in global governance is voluntary and noncoerced, but from an individual standpoint, compliance seems to be the only choice. The authority relationship in global governance is rather based on rational voluntary deference. This means that when states or societal actors accept obligations formulated by international and transnational organisations that run counter to their state interests, without being forced to do so, we observe rational voluntary deference upholding global political order.

Deference works only if there is trust and belief in the authority of different national or international entities, or in the domains of culture and public life. In the modern world, deference has to be earned (Lewis 1849), but here the authority and trust link does not imply the Hobbesian concept of authority based on trust, where a monarch trusts his subjects with liberty and the subjects, in turn, trust the monarch with the power to rule and provide protection (Curley 1994). This is a contractual and functionalist understanding of authority, based on trust and deference. However, despite the clear difference between the traditional command and obedience authority in state imagery and international authority based on deference, it is sometimes, difficult in practice to analyse whether, in a specific situation, a subordinate acted out of obligation or command with a threat of punishment, or out of rational voluntary deference. This does not imply a failure of analysis or operationalisation, but rather it indicates the complicated and deep connection between authority and other forms of power (Lake 2010).

The authority relations in global governance may in some instances reflect social contract-type arrangements, but in nature they are not even close to the functional approach of contractualism:

'A' provides just enough political order to gain the compliance of the governed, to put constraints on the behaviour required to sustain order, and 'B' complies just enough to enable A to actually provide such order. However, if A extracts too much and provides too little, B can withdraw his compliance and A's authority vanishes. (Lake 2010, p. 29).

Now, in global governance, authority is established to provide some sort of service in certain areas. It does not always rest on the order-and-compliance exchange system as expressed under the contractual model, because in global governance, B may accept the authority of an institution but does not always or necessarily comply with its guidelines.

Generally, as discussed above, the concept of authority in global governance is very often studied in the imagery of state and contractual authority. In IR, it is confined to the formal-legal conception of authority. This conception is grounded in the work of Weber: 'A exercises authority and issues laws and rules, due to the institution it represents and not due to personal qualities that A may possess like expert knowledge and moral integrity' (Lake 2010, p. 592).

Modern states are the prime examples of formal-legal authority. If authority emanates from a lawful institution or office, then law must precede authority. But if political authority issues law, then authority takes precedence over law. This is a slight complication in tracking the establishment of authority, but one thing is for sure: law cannot exist without authority, nor authority without law (Lake 2010).

The origin of authority, therefore, must be tracked and understood on broader lines beyond the frameworks of social contract, formal-legal order, and formal delegation of authority. It must be able to stand independently of these frameworks in the case of global governance – a content-independent authority. It is on these grounds that my study argues that the conceptual framework of authority in global governance is problematic. No doubt, enforcement is critical to authority, but enforcement can take many forms in the international context, so it must not be limited to coercion and violence.

#### **4.1 Empirically Understanding and Analysing Pre-modern Authorities: A Case Study of the Roman Empire**

While looking at authorities in the past, and especially those authorities which, like modern international authority, extended across continents, regions, lands, cultures, and religions in the form of imperial authorities, my study tries to draw an interpretive comparative and historical analysis of pre-modern authorities. This section on pre-modern authorities discusses the experiences of the past in order to understand why authority today has such an elusive and different character.

In this regard, my study will develop an understanding of what an imperial authority was and its sources of strength, meaning and legitimacy. For the beginner's understanding, imperial authority was an authority possessed and exercised by emperors in ruling and holding together their diverse empires (cf. Klooster 1997). Unlike our present-day international authorities, which provide institutional regulatory arrangements beyond the confines of the nation-state to deal with trans-national issues, imperial authority was based on the policy of extending the rule or authority of an empire or nation over foreign countries, or acquiring colonies and dependencies. In most cases, imperial authority derived its legitimacy from traditions, religion, and the personal qualities of the ruler who claimed it. However, there is no general definition of imperial authority, as it differed from empire to empire and even from emperor to emperor within a given empire. I will discuss it below in detail in the section on the 'representation and perception of Roman imperial authority'. My study is not particularly interested per se in imperial authority and its working; rather, it is more concerned with developing an understanding of pre-modern concepts of authority, which started to gain shape and meaning during the rise of the Roman Republic.

In order to address my study's hypothesis – authority has changed and shifted over time so there are new authorities at play in global governance – it is necessary to look at authority in the past. As Frank Furedi puts it, 'locating authority in history is essential for understanding its distinct modern forms' (Furedi 2013, p. 10). Since the beginning of the modern world, the driving force behind philosophical and sociological interest is a perception that society faces a crisis of authority.

In this vein, Hannah Arendt (2017) argued that authority has vanished in the modern world. But my study, expanding on the political theorist Terence Ball's (1987) criticism of Hannah Arendt, argues that Arendt's diagnosis of the vanishing of authority can only be partially true about the traditional authorities of the past, based solely on divine sources of legitimation and customs, as in the case of imperial authority in the Roman empire.

One can see some currency to an argument along these lines, because these traditional solid command-and-obedience authorities of the past derived their strength and legitimacy from heavenly and divine sources outside worldly affairs and were tightly bound to traditions, customs, and the past. But this is not the case with modern world authorities. Furthermore, in the words of Terence Ball, Arendt's conceptualisation of authority is tied to 'one historically specific experience', and 'a more adequate conceptual history would show how authority has been repeatedly reconstructed by being relocated in different conceptual schemes of theories' (Ball 1987, p.39).

This is why my study argues that authority has changed and developed over time into new forms and that, therefore, there are new authorities with different sources of legitimation and consequentiality. Ball (1987) is right to argue that authority has not stood still but has been recast into different political forms. In order to empirically prove this, this section discusses pre-modern authorities. My focus here will be on the distinct ways authority has been asserted and problematised in history. In order to bring sociological inquiry into a dynamic relation with the past, this section has chosen a historical-logical reconstruction of the problem of authority. This includes looking at the act of claiming authority in a historical dimension of what has been claimed and contested in the past and what was and is meant by it today.

In this regard, my study will focus on the concept of authority in the ancient world, which is the world before the rise of European civilization. Here, the focus will be on the rise and expansion of the Roman Empire. It will not be possible or even necessary for my study's purpose, to touch upon every known empire, system, or authority relationship in this period. For the purposes of my study, I choose to look at the Roman Empire in the ancient period, which is well known, well-documented and covers multiple regions, cultures, and communities. It is argued by, for example, Adam Watson (1999) that the Roman imperial system of authority, a successor of Greek and Persian systems, was a classical synthesis of its predecessors.

**Authority Always in Question:**

A clear meaning of authority – an entity to stand on its own – comes from its original Latin form *auctoritas* (Furedi 2013, p. 1), when the Roman Emperor Augustus used it to express a desire for the possession of something more than just a military or political power. This desire came at a point when the world had just begun to understand that something more than force and coercion was needed to maintain order and peace. However, the challenge that this desire brought with it was how to claim and define this possession of something more than power, or in other words, authority, because societies from the past to the present have found it difficult in conceptualizing it. In England, it was not until the 17th century that a new language was created to distinguish conceptually between authority and power (Furedi 2013). Therefore, when one looks at past authorities in ancient and medieval times, one can distinctly observe terms like authority, power, and force being used interchangeably, without any distinction amongst them. However, although not consistently observed, a distinction between authority and power has been an integral part of western political theory for over two millennia (Krieger 1977).

In the modern global world, as evident from the chapters ahead in my study, the discussion of authority has become even more confused than it was in the past. One still faces the usual questions of: who is in authority? Who is the authority? Who can speak with authority or whose authority should one obey?

Every misfortune – an outbreak of a pandemic like COVID-19, an environmental problem, a natural disaster, an accident, or a financial crisis – creates a demand for authoritative solutions and leadership. Yet, the need for authoritative solutions coincides with a cultural sensibility that is suspicious of the exercise of authority. Furthermore, the multiplication of authorities in our age has not only made the conceptual framework of understanding authority problematic but it has also made the concept of authority more liquid and elusive.

As rightly proposed by Anthony Giddens, ‘we live in an age of multiple authorities where their commands are no longer taken as binding’ (Giddens 1994, p. 42). Historically, authority has always struggled, even when its authority was beyond question. Its meaning, exercise, and institutional expression have often been the subject of dispute and contestation. For instance, powerful lords would resist the authority of absolute monarchs; kings reacted to the authority

claims of the church for papal supremacy; and subordinate classes opposed the authority of the ruling class. This struggle has constantly kept the debate alive on the most basic principle of authority; legitimacy, and the obligation to obey.

However, the most noteworthy point in all this is that the relation, meaning, manifestation and sources of legitimation of authority have undergone important mutations and their present form has little in common with the way they worked in the past. This aspect is discussed in detail here and in the chapters and case studies on new authorities ahead.

The most evident outcome of this process of change and shift in the meaning, function, and sources of authority was the gradual dissolution of the authority of tradition, which is the solid command-and-obedience authority of the past. The aim of this section is not to provide a history of authority, but rather to examine its shifting meaning, function, sources, and consequentiality from Ancient Rome to the contemporary period.

### **Conceptualizing the Problem of Authority in History:**

In understanding pre-modern authorities, it is essential to clarify what authority never was and can never be in order to avoid a common misunderstanding of mistaking authority for power, persuasion, coercion, and violence (for details see Chapter 1 section 1.1 & Chapter 4 section 4.3). Where force is used, authority ceases to exist, both in the case of past and modern governance structures. Similarly, authority is incompatible with persuasion, which presupposes equality and uses argumentation. In its true sense, authority is not compatible with the arbitrary exercise of power, as initially discussed.

Authority stands between persuasion and the use of force. The best example to clarify it would be the Iliad – one of the first recorded poems from ancient times, written by Homer in the 8<sup>th</sup> century BC – which sheds light on a society where relations of authority and its meaning had not yet been defined and where authority rested on divine forces. It depicts a scene where Agamemnon's kingly authority is contested for being devoid of moral authority, resting on his wealth and command of a large body of warriors, whose loyalty he does not enjoy any more due to his selfish behaviour and abuse of his royal position. On the battlefield, Agamemnon tries desperately to regain the loyalty of his army by telling them to leave the battlefield and return home, intending to provoke a sense of shame among them and rekindle a will to fight. But at the same time, Agamemnon had also instructed his generals to stand ready to

restrain their men from fleeing the battlefield (Furedi 2013, p. 17). Despite this attempt, his forces choose to leave for the ships and turn their back on their king. Odysseus, one of the Agamemnon's generals, tries to restore the eroding authority by persuading the fleeing army back to the assembly and reminding them of the divine legitimation of kingly authority. Now, his act of intervention shows that he may be a man capable of restoring faith (through persuasion) in the authority of the king's office if not in Agamemnon. But the epic introduces at this point another character, Thersites – an ugly and deformed anti-authority character – who publicly criticizes and accuses the king of poor leadership and greed. Odysseus again tries to reassert order by denying Thersites the right to speak and proceeding to beat him, meaning by using force (Furedi 2013). Now, silencing Thersites through the use of violence shows the precarious status of relations of authority. Through this act of physical force, order is restored but questions about the nature of kingly authority linger on. This epic shows, when the soldiers flee, that it is evident that royal authority has been lost and Thersites's criticism not only poses a question about the legitimacy of authority but also shows the reality of what happens when authority is lost. Certainly, what Agamemnon and Odysseus possessed was not authority.

Therefore, both in the past and in the modern world, if authority is to be defined and understood, it has to be in contradiction to power and persuasion. Doing this while understanding pre-modern authorities can be challenging at times, because the imperial authorities were quite often founded on coercive command-and-obedience grounds and embedded with religious persuasion of the 'divine right of kings'. The authority relationship between the one who commands and the one who obeys rests neither on abandoning one's right to freedom nor on the power of the one who commands: what they both have in common is their pre-determined, stable places.

This aspect of authority is Platonic in origin and thus of historical significance, because when Plato started to find and develop an understanding of the concept of authority in public affairs in the polis, he was aware of the fact that he was trying to find an alternative to the common Greek way of handling domestic affairs, which was persuasion, and to their common way of handling foreign affairs, which was force and violence (Reeve 2004). This struggle of the ancient Greek philosophers to find an alternative to power and coercion which rose above the strict coercive command and obedience framework implies that the pre-modern concept of



authority must have developed along religious and traditional lines. Therefore, in tracing authority's nature, source of legitimation and functionality back in history, it can be seen that the source of authority in an authoritarian setup was always force, external and superior to its own authority, known as heavenly sources of legitimation, as in the case of the Roman Empire (cf. Blidstein 2018). It is very typical of Christian type of authority under the influence of the church in the Middle Ages that the source of authority lay outside itself, but the seat of power was located at the top of a pyramid. This also applied to the Byzantine Empire's Greek Orthodox-based authority of 'one Master one faith' (Watson 1999, p. 108) or the Roman Empire's tradition-based authority.

In the case of Roman imperial authority, the source of authority lay exclusively in the past, in the foundation of Rome and in the greatness of its ancestors. One could observe that this led to authority structures under Roman empire with a hierarchical structure, which incorporated inequality and authoritarian rule. This shows that not only did pre-modern authorities lack any clear distinctive form in contrast to coercion and persuasion, but rather they also derived their legitimation from heavenly sources. These aspects are unknown in modern global governance for even the most solid and traditional authorities, let alone the new authorities whose grounds of legitimation and function are quite different (refer to the chapters/case studies ahead on new authorities & their grounds of legitimation).

Weber's writings show that he was deeply engaged with the concept of authority but at the same time he was also constantly troubled by the problem of how authority could be legitimized: he eventually settles for impersonal formal authority with moral content. That is why Weber puts his faith in the charismatic authority of individual leaders (Weber 1978). Some critics claim that Weber tended to focus on the command side of the authority relationship at the cost of examining how it was accepted and internalized. In other words, the problem of authority in Weber's case was that he was more concerned with the problem of how authority's commands were produced than with the conditions which made them socially acceptable (Turner 1990).

For a long time, authority was perceived as a relational concept answering the question of what makes people consider commands and institutions as authoritative. The one relationship that seems to have existed in all historically known societies, that of parents over children, has frequently served as a model in political thought. Even Aristotle, claiming every

community is composed of those who rule and those who are ruled, used the example of the younger and the older ones (Aristotle Politics cited in Arendt 1977). However, this form of simple and non-political relationship expresses the relationship of authority in only an embryonic form. At times, it was claimed that authority possesses a compelling power to motivate and gain obedience. It is closely associated with power and yet remains distinct from it. But again, as Arendt and others have argued, the use of force and persuasion are alien to the concept of authority. In fact, the very need to use force or persuasion is a testimony to the absence of authority (Arendt 1977).

Traditional authority does not have to justify itself and force itself upon its subjects; it already includes a warrant for influencing and directing behaviour. Once authority has to justify itself or force itself upon its subjects, it is well on the way to losing its authoritative status. In this regard, Nietzsche also argued that a real authority does not need to enter into a debate to justify itself (Nietzsche 1889). But his conceptualization of authority as simply 'command' is one-sided. Such a status of authority in the past rested on traditional foundational norms – divine authority and tradition and customs – which warranted its exercise and its right to claim and expect obedience. But traditional authorities vanished with the loss of tradition alongside the reduction in the importance of religion.

### **Studying Authority in History:**

Authority as a concept, dealing with either domestic affairs or foreign affairs did not always exist in human communities. The word and the concept are Roman in origin. One might think that the concept originated from the Ancient Greek civilization but neither the Greek language nor the political experiences of Greek history show any knowledge of authority and the kind of governance it provides (Arendt 2017, p. 497; cf. Reeve 2004; Furedi 2013). This aspect is proven from the philosophy of Ancient Greek philosophers like Plato and Aristotle, who were already trying to introduce something akin to authority into the public life of the Greek polis.

The best point to start this historical inquiry of the problem of authority is to look at authority in ancient Greece. The prosecution of Socrates, who dared to question the authority of *nomos* – authority based on past traditions, laws, and customs – shows that those who prosecuted him were no less concerned with the problem of authority than Socrates himself. Socrates's

attempt at promoting his ideal of moral authority and the Greek peoples' understanding of authority based on past traditions and customs show that the concept of authority was absent in ancient Greece (Mulgan 1972).

The question that arises here is why the Greeks had such difficulty in developing a concept of authority. Answering this question would not only show the problem of authority in the past but it would also show how closely authority was linked to past traditions and customs, because in ancient Greece the meaning of tradition, as well as authority, was not established in the first place. The idea of traditions and the ancestral ways of doing things was not codified and understood in a systematic way. Even religion, which back then had a very clear and systematic character, was not codified (Furedi 2013). It is odd to note that, although the Greeks and their philosophers were interested in engaging with ideas about who could claim authority, what was the role of an expert, and what was the status of the law and public opinion, they failed to develop a foundational concept of authority. In the words of Hannah Arendt (2017), the Greek language was actually devoid of a concept of authority, because the Greeks had no idea of authority based on their political experience.

Another reason for the absence of a concept of authority in ancient Greece is the Greek society's disposition to change and openness to new ideas, with a preference to be persuaded by reason rather than by traditions and norms. This actually made it difficult to seek the community's obedience and respect towards past customs and traditions. Since Greek society was open to change and was influenced by reason and debate in the absence of codified customs and traditions, this resulted in an argumentative political culture, rather than one that was orderly, structured and hierarchical, and conducive to the desire and birth of authority (Furedi 2013, p. 41). Individuals in such an environment do not see themselves inferior to others and ideas about right and wrong cease to come through the available wisdom of traditions but are attained through discussion and debate. In this sense, the absence of a concept of authority cannot be simply termed an intellectual failure, because a society that is readily open to change and risk-taking cannot give birth to social and political hierarchies based on their traditions and customs.

Now, the absence of a concept of authority in ancient Greece does not imply that Greek communities and individuals did not try to influence people's behaviour through appeals to traditions, customs, and precedents. But the problem was, which ancestors, and what were their

customs? Each side would accuse the other of violating the dictates of the unwritten ancestral constitution (Furedi 2013, p. 37). This controversy over customs and traditions shows how ancient Greece lacked foundational authority.

The above discussion on the absence of the concept of authority in ancient Greece helps my study in understanding the 'problem of authority' historically and sheds light on the foundations of authority – traditions, customs, ancestral ways of doing things, and some unwritten laws.

### **Authority in Greek Political Philosophy:**

In understanding pre-modern authority, one needs to shed some light on Greek political philosophy, which undoubtedly played a huge role in shaping it. This fact is evident from the concept of authority presented in Plato's Republic, in which the concept of the philosopher king is an attempt to ground authority on reason, which in my study is referred to as rational voluntary deference. But this concept of his, although free from external means of coercion, was ultimately based on persuasion, which again is not authority. After the death of Socrates, Plato found it insufficient and began to look for something more akin to rule without persuasion and external means of coercion or violence. In his attempt to find an authority arrangement which is free from the principle of coercion, Plato looked at some models of existing authority relations of the time, which were mostly from the private sphere of life, like the relation between a shepherd and his sheep, a physician and the patient, and between the master and the slave (McAleer 2020). In all these cases, the exercise of authority is based either on expert knowledge or the membership of ruler and the ruled in two different categories of beings, one of which is inherently subject to the other, as in the case of master and slave. These situations would make the use of coercion and persuasion unnecessary. But again, authority here required that the obeying element in the relationship itself be prior to the issuance of commands; for instance, the patient became subject to the physician's authority when he fell ill. Likewise, to define 'authority' itself, the authority relationship cannot be based on prior natural inequality like that between master and slaves.

Clearly, Plato's appeal to expert knowledge and specialization in the analogies of a carpenter being competent to make furniture or the physician to heal the sick were aimed at introducing the idea of statesmen being competent in dealing with human affairs, based on natural or

rational voluntary deference. But in his choice of analogies, the element of coercion is so evidently present in relations such as master and slave that his concern for assuring voluntary obedience is constantly negated. This is necessary for establishing grounds for what has been called authority since Roman times (McAleer 2020). Plato, to enforce obedience without subjecting the public to coercion, violence, or even the power of reason, used religious images of hell and punishment to establish voluntary deference. Thus, the use in the Roman empire of religion and lengthy tales about the hereafter, with rewards and punishments, were politically motivated (Reeve 2004, p. 319).

Beside religion as a source of legitimation, staying true to the traditions is at the core of Roman politics and empire. It is a conviction of the sacredness of foundation in a manner that once something has been founded it remains binding for all future generations. Therefore, those endowed with authority during the Roman empire were the elders, who had obtained it by descent and by transmission from those who had laid the foundations for all the things to come. The authority of living was always, in this sense, derivative (Plato 1961). It was in this political context that the past was sanctified through tradition. The link between authority and tradition was very strong; as long as tradition was uninterrupted, authority was inviolate and therefore, able to act. Without accepted time-honoured practices and models, and without the wisdom of the founding fathers, authority was unimaginable.

The Roman empire was founded on the Roman trinity of religion, authority, and tradition and together they served as its legitimation sources. The Roman trinity not only survived the transformation of the republic into empire but influenced wherever the pax Romana created Western civilization on Roman foundations. Whenever one of the elements of the Roman trinity, religion or authority or tradition, was questioned or eliminated, the other two were no longer stable (McAleer 2020).

The Roman political concept of authority, which was based on the amalgamation of the beginning and founding in the past with Greek philosophical ideas, was a kind of requirement for any political order. There was barely anything that could assert itself with greater authority and more far-reaching consequences than this amalgamation itself (McAleer 2020). It shows that pre-modern authorities were based on religion, tradition, and past experiences. It reflects where authorities in those years derived their legitimacy from. Politically, the most obvious consequence of the amalgamation of Roman political institutions with Greek

philosophical ideas was that it enabled the Church to interpret the vague and conflicting notions of the hereafter and elevate itself to the rank of actual temporal power. It coincided with the downfall of Rome, the disappearance of a known secular order and the emergence of the papacy as a temporal power. Therefore, during the Medieval period, popular and literate notions of the hereafter with rewards and punishments were more widespread than they had ever been in the past.

One thing that can be learnt from the Roman Empire case study is that all the models and examples of authority relationship, such as that of healer and physician, all Greek in origin, have since been preserved and further elaborated, but the one political experience which brought authority as a word, concept, and reality into our history – the Roman experience of foundation – appears to have been forgotten. This is to the extent that even now, when one discusses or tries to understand authority, which is one of the central concepts of political thought, it is as if one is speaking in abstractions, metaphors, and figures of speech in which everything can be taken and mistaken for something else, because we do not have one fixed reality, either in history or in everyday experience, which one can refer to.

#### **Founding of Authority in the Roman Period:**

As in the view of Frank Furedi (2013) to this day, solutions to political issues and problems are very often found through reflections on the experience of Rome. That is why my study also looks back at the concept of authority in the Roman empire to address my hypothesis that authority as a concept has changed and developed over time and thus there are new authorities at play in global governance, which require reconceptualization to make sense of them. Sometimes, it seems that the Roman legend, ideals, and symbols are essential for rediscovering the meaning of authority in very different circumstances and in line with different historical and cultural sentiments.

The concept of political authority started to gain shape and meaning during the rise of the Roman Republic. In contrast to Greeks, the Romans did not take change for granted. They rather tried to consolidate authority through a powerful sense of tradition and continuity. Customs, ancestry, and their past were cherished and were made relevant and significant in public life (Furedi 2013). This provided a strong foundational basis for the establishment of a unique Roman sensibility towards authority, which was missing in Greek public life. The

absence of such a foundational basis resulted in the failure of Greeks to conceptualize authority. However, the Romans, in elaborating their idea of authority and reference to avoiding the instability of the Greek polis did not aim to address the weaknesses of the Athenian political system in comparison to their own. In fact, the Romans' concern with Greek failures in conceptualizing authority were more focused on questions of who had authority and how it should be exercised.

A clear example of how the Romans consolidated authority and elaborated on the concept of authority is provided in the writings of the political philosopher Marcus Tullius Cicero (106-46 BC) (Baraz 2012). His writings clearly exhibit the concern of Romans with the preservation of Rome's ancient customs and the upholding of its traditional authority. Understanding the problem of authority with reference to Greek experience, he believed that the welfare and stability of Rome was linked to the resilience and influence of its customs and traditions. He was concerned about cultural and social influences that could diminish the authority of Roman traditions and could result in the erosion of foundational authority (Baraz 2012). One important factor to which Cicero accorded great importance is the bond to a place, which in his views served as the foundation for authority; tradition is associated with the physical environment and unlike Greeks, who readily moved from one place to another, Romans were bound to the specific locality of one city – Rome – despite their magnificent expansion.

Preservation of and respect for traditions and customs were considered a moral duty for every Roman, because Cicero also insisted that those who helped in safeguarding and extending Roman customs would enjoy a special place in heaven. This represents a source of moral authority (Baraz 2012). The spirit of preserving and revering Roman traditions and customs for upholding authority reached its peak during the ascendancy of Augustus. He presented himself as a restorer of the ancient ways and a custodian of the traditions, laws, customs, religion and rituals of Rome, reminding the people that he would not accept any public office inconsistent with the customs of their ancestors (Furedi 2013, p. 51). Roman society had a knack for adaptability, which enabled it to institutionally adapt ancient customs or reinvent them in a way that made them compatible with existing public affairs. This enabled Augustus to successfully establish a multi-dimensional system of political authority.

No matter how close the link to authority and tradition was, there was no written and codified ancient constitution that served as a legal document. All that existed was a set of informal

guidelines based on customs and traditions transmitted through generations. It was, in a way, convenient because its lack of formality provided room for adaptability which allowed it to evolve according to the development of Rome from a city state to a vast empire. However, a series of major wars and Rome's imperial expansion transformed the Roman world in a way that began to expose the weakness and limitation of governance and rule that was based on respect for authority and adherence to tradition.

To nurture and cultivate tradition, it was declared an obligatory duty for all, and every generation was bound to the previous one in this regard. In the Roman empire, belief in tradition was entrenched in society to such an extent that even religion was focused less on the gods than on affirmation of the past (Baraz 2012). From this perspective, authority in the Roman empire meant the wisdom of the ancestors in the form of the necessity of religious belief for the solidarity, loyalty, cooperation, and dynamism of the citizenry.

Despite the sheer resources and energies consumed in preserving the past and its customs, frequent wars and expansions showed that the ancient constitution was not sufficient to provide a foundation for imperial authority and solidarity. That is why the Roman emperors focused on promoting visible and tangible expressions of their authority, presenting themselves as great men and of divine origin (Furedi 2013). All these attempts, ranging from the restoration and preservation of traditions to invoking beliefs in their divine origin, were aimed at ensuring stability and order in the Republic. Although these attempts failed to resolve the crisis of authority, they did help in the conceptual clarification of the idea of authority (Furedi 2013, p. 56).

As the crisis unfolded, however, the Roman traditions and customs lost significance. Rivalries among the elites resulted in a series of civil wars and the assumption of dictatorial power by ruthless leaders. The ruthless pursuit of self-interest by the elite led to indifference towards traditional customs and religion and the loss of tradition resulted in the loss of authority. The greatest casualty of the crisis was the Roman senate; although it did not have any legal powers, traditionally the prestige and authority of the senate were real and effective in providing advice on policy and decision matters. Its advice was not a command, yet it could not be ignored (Furedi 2013). This shows that deference to authority in the Roman empire depended on adherence to customs and traditions. As soon as tradition was weakened, deference to authority also eroded. The crisis of the Roman empire can be understood as a historical event



when authority required justification and conceptual elaboration. Informal customs and traditional practices were no longer sufficient to uphold authority and order: now it was left to Augustus Caesar to reinvigorate tradition and establish a political order that provided not only a place for the individual authority of the leader but also revitalized authority as a whole.

### **Augustus: The Personification of Authority and the Roman Concept of *Auctoritas***

Rome provided not only intellectual resources but also political experiences for conceptualising authority. *Auctoritas* is a uniquely Roman idea, but this does not mean that Romans discovered the concept of authority. Through their experiences and intellectual resources, they reflected on it and tried to conceptualize its different dimensions, such as exercise, claim, legitimation and above all distinction from power – ‘*potesta*’ (Furedi 2013, p. 70). Law, order, and deference to authority, and the whole framework of political and social establishment is the work of Rome.

This is why Rome serves as a source of authority for political rulers, religious leaders, and philosophers. To elaborate on the concept of authority in the past, it is necessary to explore the meaning of the concept of *auctoritas*, because there is a general belief that this concept played a significant role in the public life of Rome and was used fluidly in a variety of different contexts. To explore such an important cultural and political concept, on which the understanding of authority in the present also depends, it is necessary to examine what questions it tried to answer and what problems it tried to solve.

The 19th century classicist Theodor Mommsen wrote that ‘*auctoritas* was an indefinite word, evading strict definition.’ He tried to conceptualize the term as a force that was ‘more than advice and less than a command – an advice which one may not safely ignore’ (cited in Furedi 2013, p. 60). In this sense, it comes close to modern-day international authority, which I believe is not force but more than advice and less than a command; advice or suggestion that cannot be safely ignored by states without running the risk of being pushed into isolation. This is why I argue that states and actors in global governance may at times not abide by the guidelines and advice of the international organisations, but they will nonetheless accept and defer to their authority so as to avoid not to be looked upon as an odd-one-out in the global community. The EU, for example pays fines for its GMO policy – ‘deferring and accepting the

WTO's authority – without feeling obligated to follow its guidelines in changing their own production and agricultural policy' (Zürn 2017, p. 265).

*Auctoritas* is frequently contrasted with the word *potesta*, which can be defined as power – referring to military power (Furedi 2013, p. 60). According to Cicero, in an ideal state, *potesta* lay with the people and *auctoritas* with the state. He not only drew a distinction between the two but he also gave *auctoritas* a moral meaning and authority (Baraz 2012). Karl Galinsky (1996) argues that the concept contains strong intellectual and moral superiority, with a capacity to initiate and inspire deference. *Auctoritas* in this sense used to communicate the personal qualities of individuals who spoke with authority and referred to someone being in authority.

However, as is the case with the concept of authority in the present, an attempt to understand *auctoritas* through definition is doomed to fail, because the Romans themselves used the term in a way that made sense in a wide variety of relationships and experiences. Therefore, strictly defining it would be challenging and misleading. But like with authority in general, *auctoritas* with its multiple usages represented a claim to influence, respect and esteem (which in my study is referred to as deference: see Chapter 4, section 4.3). What is most important about the concept is that deference to authority is irrelevant to the holding of a formal office, position, or military command (Furedi 2013). Therefore, the emperor Augustus, through the concept of *auctoritas*, laid a claim to something more than just a political office or military power, along the lines of preserving the tradition of Rome and maintaining its foundation.

Augustus is celebrated in history for having given meaning to authority – *auctoritas*. In this regard, *Res Gestae Divi Augusti* (The Deeds of the Divine Augustus) is an important historical document of the Roman Era, and represents significant contribution to the historical construction of the concept of authority (Cooley 2009). This document, although its accuracy is questionable, elaborates what he believed were the features of authority. Augustus no doubt desired to possess authority, which in his understanding was something more than just the military power needed to seek obedience, and in this he succeeded in distinguishing authority from power and coercion.

However, his concept of something more than power was 'moral authority,' which he believed was his personal accomplishment (Xiong 2021; Cooley 2009). He claims to have attained moral authority by restoring the traditional Roman institution of the senate. After ending civil wars and gaining total control of the Roman empire, he transferred his formal powers to the senate and the people of Rome. In return, the senate bestowed upon him the name of Augustus – a name that was an honour and had a moral connotation (Cooley 2009).

This act of Augustus contributed to the conceptualization of authority in two distinct ways. First, in restoring the senate and transferring power, he claimed to have authority, as distinct from power and dictatorial rule, thus creating a practical distinction between legitimate authority and power. With this act, he claimed to have restored the Republic, which for him meant he presented himself as the legitimate ruler of Rome. The restoration of the senate also resulted in the establishment of a new form of institution – the Principate – which awarded Augustus the title of 'leader of the senate' (Wirszubski 2007, p. 14). This rendered him the leading statesman, or the first amongst equals, which made him a personification of both leadership and authority.

Second, through the honour bestowed upon Augustus by the senate, he gained recognition and legitimation as an authority. The title, 'Augustus,' (he was previously known as Octavian) was etymologically connected with *auctoritas* in the sense that he was in 'some ways above ordinary human standards' (Wirszubski 2007, p. 15), but nonetheless it was still legitimation and recognition based on divine sources, beyond worldly affairs. From these events, one can see that he did attain moral authority, which he claims was his big achievement. He writes in *Res Gestae Divi Augusti*, 'I attained fully *auctoritas*, although I possessed no more official power than others who were my colleagues in the several magistracies' (cited in Galinsky 1996, p. 11). His focus on *auctoritas* shows his attempt to establish an idea of authority as distinct from the physical and military power that was common to empires at that time. This document depicts individual moral authority fused with the power of tradition, religion, and Roman identity.

There are some scholars who believe that Augustus gave the senate only a semblance of power and still held naked coercive power (Starr 1952). One can understand these critiques because different strands of *auctoritas* existed in elusive relation with one another. But Augustus succeeded in at least developing an idea that explained how coercive power was not

always necessary for gaining obedience – implying authority. Therefore, it is irrelevant to my study to go into a debate as to whether Augustus himself possessed authority as long as it contributes to my study's understanding of what authority as a concept meant at that time.

One possible explanation that one can agree on is that he might have possessed authority in a functional and contractual sense, because the Roman people, exhausted by decades of civil war and disorder, wanted security and stability. Octavian – Augustus – was seen as a strong military commander who had both political intelligence and statesmanship. This was the right moment for him to establish authority in a contractual sense by promising the Roman people security and order in exchange for their obedience.

One way or another, Rome provided a foundational precedent for the exercise of authority for the first time in history. Therefore, even centuries after the collapse of the Roman Empire, its political concepts and experiences still provide a paradigm of authority. The self-conscious construction of authority that took place in ancient Rome provided an important political and cultural legacy for medieval Europe, which served for a long time as a warrant for claims on the basis of recognition or entitlement. The claim to universal authority by the Papacy was often represented as the continuation of the Roman imperium; the church surely extended the Roman concept of authority, especially when it took the initiative of crowning Charlemagne as Holy Roman Emperor (Furedi 2013, p. 100).

In this way, the Roman Empire and its legacy continued to have a huge impact on the cultural and political life of medieval Europe. Dante's writing shows idealization of the Roman era as a golden age that provided normative standards for the conduct of an orderly and good life, particularly during the Augustan period. Dante even idealized the Roman imperial authority by arguing that an imperial authority in the way that it was exercised in Pax Romana (conforming to Roman traditions and customs) was essential in order to keep subordinate societies at peace (Mancusi-Ungaro 1987).

But authority as a concept still eludes many with its liquid and changing forms, especially since the link between authority and tradition and religion has been broken in the modern world. In the Middle Ages, human society was once again faced with the challenge of looking for new foundational authority. The disintegration of Roman civilization had a devastating impact on European societies because one of the fundamental issues confronting Europe in the Early

Middle Ages was not only how to establish and give meaning to authority in new social and political realities, but also where to locate authority (Furedi 2013). In the Middle Ages, human society was faced with a struggle between two authorities; the spiritual and the temporal. This is one of the most characteristic differences between the ancient and the modern world. In the Roman empire, the two authorities had their fair share of struggle for supremacy, but then they settled for becoming mirror images of each other (the case of the two authorities in the Roman Empire is discussed below). During the Middle Ages, Christianity, unlike other religions, accepted a fundamental differentiation between church and state. It was represented as consisting of two distinct jurisdictions – ‘the sacerdotium or priesthood; and the imperium or empire’ (Furedi 2013, p. 96).

This struggle to conceptualize authority even goes down to the late 19th and 20th century, where the loss of cultural support for authority, due to the rise of authoritarian tendencies in the form of dictatorial powers leading to two world wars, brought a cultural and moral devaluation of authority. It was presented as a principle that was inferior to freedom, or even the exact opposite of freedom, casting doubts on its moral and intellectual credibility (refer to the authority and freedom figure below).

The language used to express authority had become ambiguous and evasive. The term ‘principle of authority’ was frequently used in public discussions and the press as if the public and readers could readily understand the term (cf. Furedi 2013, p. 273). This is when authority started to be understood in contrast to anarchy and disorder, hence losing its foundational meaning. As quoted by Frank Furedi, a ‘London Times correspondent reported from France in August 1852 on a group of local dignitaries praising Louis Napoleon for the re-establishment of the principle of authority and the repression of anarchical elements’ (Furedi 2013, p. 274).

In a similar vein, the principle of authority was often cited as the antidote to disorder and political chaos. Even the scholarly works of that time had a similar approach to authority. Matthew Arnold, for example, in his work *Culture and Anarchy* argued that ‘we have got a much wanted principle, a principle of authority, to counteract the tendency to anarchy which seems to be threatening us’ (Arnold 1869, p. 67). Part of the problem in developing an independent understanding of authority on its own, without being coupled with an anarchy or liberty narrative, was that the commentators who used the concept of authority often failed

to recognise its specific historical character. This is one of the factors that contribute to the problem of authority even in the modern world which is explained in the sections ahead.

However, the moral and cultural devaluation of authority stopped in the post-world-wars period. In contrast to the traditional understanding of authority as inferior to freedom, modern authorities tend to have a complementary relationship with freedom. Although the reconceptualization of the authority concept is still a work in progress, a departure from the classical theories of liberalism and conservatism measuring authority and freedom provides a clear need for the argument that such a reconceptualization is needed in the modern world. This is because theories relating to authority and freedom, like liberalism and conservatism, still represent the late 19th century and early 20th century context of traditional authority, due to which they fail to provide a clear and broad understanding when applied to modern authority structures and institutions. Their lack of validity in the face of new authorities proves my study's argument that authorities have changed and developed over time and that there are new authorities on the horizon in modern global governance which make the existing conceptual framework of authority problematic. The problem arises because the latter is geared more towards solid and traditional authorities of the past and does not cover new authorities which may not necessarily be public authorities in origin, yet they perform public functions (refer to Chapter 4, sections 4.6, 4.7, & 4.8 on new authorities). Liberalism as often seen measures the process of receding freedom and conservatism measures a process of receding authority: they provide a simple explanation in binaries, which is no longer valid when applied to modern authority and freedom structures, because the global governance landscape has changed due to the multiplication of authorities. Therefore, my study has taken a course beyond such pre-established theories in order to establish a broader and empirical understanding of authority.

There is no denying the fact that freedom has faced serious threats from all sides since the beginning of the century with the rise of all kinds of tyranny and on the other hand there is also no denying the fact that the disappearance of most of the solid and traditionally established authorities is a hallmark of the modern world. Now, in the case of pre-modern authorities, as can be observed in the Roman empire, authority and freedom had a flat, inverse relationship; an increase in the level of authority meant a sharp decrease in freedom and a decrease in authority meant an increase in freedom (Arendt 2017, p. 495). In contrast, it is

interesting to see that in the modern world, due to a shift in the nature of authority, the relationship between authority and freedom has become reversed. An increase in authority means a direct and proportional increase in freedom, while a decrease in authority means a simultaneous decrease in freedom (refer to the figure below). Modern authority is not inferior to freedom but rather plays a complementary role in ensuring freedom, justice, and rights. As in the words of Kustermans et al, 'the new authority impresses, while the old authority oppresses' (Kustermans and Horemans 2022, p. 224).

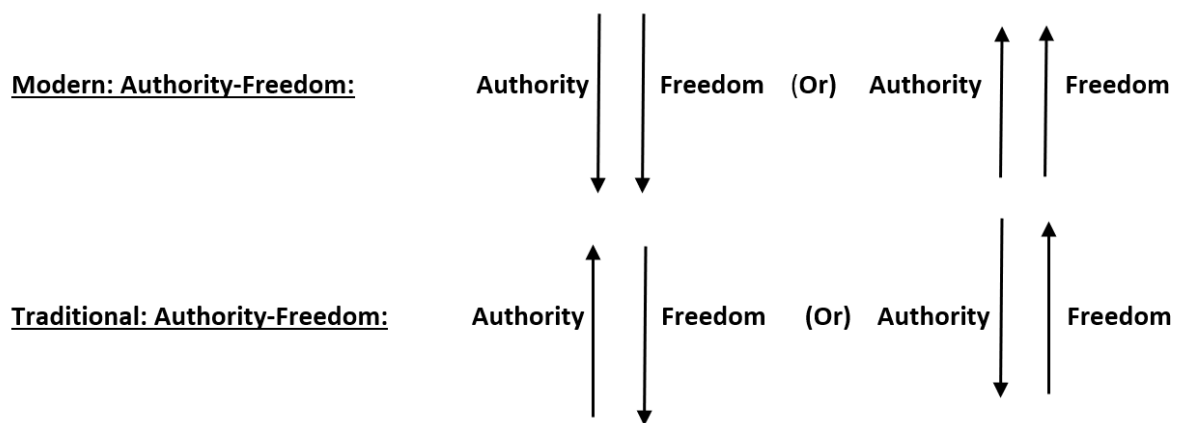


Figure 8: Modern Authority not inferior but complementary to Freedom

From the perspective of liberalism and conservatism theories, it is easy to understand the authority and freedom relationship in the pre-modern world. But when it comes to modern global society, this relationship has become rather complicated. One might wonder how this simultaneous recession or simultaneous increase in authority and freedom takes place. On empirical grounds in the modern global governance area, after the second world war, in which the world witnessed the most gruesome crimes against humanity, global governance institutions were established in order to have institutional regulatory arrangements beyond the confines of the nation-state to deal with transnational issues and, most importantly, to ensure the freedom and human rights on a global level.

Unlike pre-modern authorities, the creation of authority in modern global governance does not mean curtailing people's freedom, but rather the opposite. It was established to ensure the freedom and rights of people and countries and to guard them against being quashed at the hands of coercive, dictatorial, persuasive, fascist, or even terroristic powers. In other words, authorities emerged at the global level and shaped existing global governance

structure based on formal and institutionalised or non-institutionalised and informal inter-state global governance authorities. Alongside these, non-state global governance authorities arose too, with the aim of preventing any nation-state or other entities resorting to the use of bare power, coercion, and violence (refer to Figure 2 in the Introduction chapter for the elaboration of different clusters of international organisations). These and many other such authorities in each cluster make up the global governance structure, which is responsible for ensuring global peace, freedom, and development.

One specific example is the establishment of the Financial Action Task Force (FATF). The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. This inter-governmental authority sets international standards that aim to prevent illegal activities and the harm they cause to society and its freedom. More than 200 countries and jurisdictions are committed to implementing them. The FATF has developed the FATF recommendations or FATF Standards, which ensure a coordinated global response to prevent organized crime, corruption, and terrorism. The FATF reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. The FATF monitors countries to ensure they implement FATF Standards fully and effectively and holds countries to account if they do not comply<sup>8</sup>. The existence of such an authority with such a mandate translates into a different consequence (refer to the different consequential concept in the introduction chapter) than a traditional command-and-obedience-oriented authority would have. In the case of the FATF, the more authority it has the more watchful it will be and consequently the freer and more secure global society would be. Therefore, if we apply to these new authorities like FATF the same old traditional theories of liberalism, conservatism and contractualism, we will draw misleading and false conclusions.

From the above discussion on the character of pre-modern authority, one can conclude that in those days authority was so closely woven into the fabric of tradition, customs, and religion that it is difficult to recognise it as having a separate or even distinguishable identity. Now, in modern times, when authority has lost its traditional foundations, not only do some think that authority has vanished, but it also seems insufficient that authority on its own could maintain

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<sup>8</sup> Financial Action Task Force FATF an Intergovernmental Authority <https://www.fatf-gafi.org/about/whatwedo/>



stability or uphold order. The necessity for authority to derive legitimacy from another source has been seen increasingly essential for a modern society. Therefore, in modern society, authority's legitimacy comes from multiple sources and fundamentally from reason and social purpose – the global common good (cf. Zürn 2018), due to which we also witness the multiplication of authorities in global governance, which warrants a reconceptualization of authority.

### **Representation and Perception of Roman Imperial Authority:**

If one wishes to understand not only the actual political experiences behind the concept of authority, which is exclusively Roman, but also authority as the Romans themselves understood it and exercised it, one needs to look at the representation and perception of Roman imperial authority. In the words of Lukas De Blois and Oliver Hekster (de Blois et al. 2002), the representation and perception of Empire is a multifaceted area of research, which in my study greatly helps in understanding imperial authority in the Roman Empire.

Why is it necessary to understand imperial authority from the perception and representation angle? Because empire is not a simple and general concept to begin with. Even if we do not go back in time and just focus on the period since the end of the 19th century, when the idea of imperialism began to be discussed and explored systematically, it is obvious that not only imperial authority but also its structures and functions differed from one imperial authority to another. For instance, the British and French empires or the USSR and the USA show clear differences between them (Richardson 2002). Therefore, there is no general definition of an imperial authority and it cannot be understood as a theoretical notion that applies across all empires. Every empire is unique when it comes to the exercise and legitimation of authority and its relationship with the ruled. Therefore, the perception of the ruled or the empires' subjects also tell us a lot about the kind of authority possessed by the empire. In this vein, it would be wise to look into what the Romans themselves thought the empire was, how they represented it to themselves and perceived it themselves, and how that perception affected the nature and function of imperial authority and imperialism.

Lukas De Blois (2002, p. 149), tries to answer the above questions by looking into the work of the Greek historian Herodian<sup>9</sup>, which consists of a mixture of history, *enkomion*, novel and biography of the Roman emperors. This study also uses Harry Sidebottom's (2016) work on 'Herodian's historical methods and understanding' to establish an understanding of pre-modern authorities in the Roman period. Both their accounts provide not only a historical window to take a peek at Roman imperial authority, but also instances of the way authority was perceived and desired by the emperors. Herodian looks at imperial authority as a conglomerate of different people, like organs in a body with their own functions and statuses but under the dominance of the Roman emperor.

At the start of his work, Herodian shows Marcus Aurelius as the role model for emperors, possessing all the traditional virtues and qualities which amount to traditional sources of legitimation for authority in those days. According to his account (quoted in de Blois et al. 2002, p. 151), Marcus Aurelius 'had a good family background, an excellent education, interest in culture and philosophy, moderation, zeal, courage, military prowess and competence in legal matters'.

These virtues of an emperor, exemplified by Marcus Aurelius, not only serve as sources of legitimation, but also show that his authority was based on deference and goodwill, rather than on power, money, and violence. These traits help my study in establishing the fact that there was authority in the Roman empire, although it sometimes ceased to be authority because of resorting to coercion and violence, most often in foreign lands.

Further proof of the fact that even the Roman emperors had a realization that something more than just power was needed to rule, is provided by Herodian's account, 'where he has the emperor say, on his deathbed: money is not enough to compensate for the license of a tyrant and a bodyguard is not sufficient protection for a ruler unless he has the goodwill (eunoia) of his subjects as well' (Herodian quoted in de Blois et al. 2002, p. 152). By goodwill, here, is meant deference-based authority. According to Herodian's account, when news of

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<sup>9</sup> Not much is known about Herodian's life and social status, but together with Dio Cassius (q.v.) he is the only historian who was a contemporary writer of the turbulent period in the Roman Empire following the death of Marcus Aurelius (Herodian, 1.2.5) whose work has been fully preserved to the present day. Herodian's *Roman History* is a collection of eight books covering the period from the death of Marcus Aurelius in 180 A.D. to the beginning of Gordian III's reign in 238. It provides a first-person account of one of the most politically diverse times of the Roman Empire.

Marcus Aurelius's death was broken, the whole army and the common people alike mourned for him and there was not a single subject in the Roman empire that was not saddened by his passing. However, this was not always the case. The people of Rome did not always behave like the majestic demos of a city that dominated the civilized world, and neither did the emperors always exercise legitimate authority. The later emperors became increasingly dependent on the military, whom they had to pay heavily in order to stay in power (de Blois et al. 2002, p. 152).

Imperial authority based on deference and the goodwill of the people in the Roman empire ceased to exist every time that military power took over. According to Herodian's views, recorded in de Blois et al. (2002) p. 153, Sidebottom (2016), the military is a dangerous and greedy institution, which is difficult to keep under control. It would rather support a tyrant who would give them power than a good emperor with legitimate authority based on deference. The military's contempt of authority would even go to the extent of murdering an emperor. This happened to the good emperor Maximus, one of the senatorial emperors of A.D. 238, who required soldiers to abide by the imperial laws and be loyal to the senate and the emperor. But the military, instead, seated a child, Gordian III on the throne and killed the good senatorial emperor (de Blois et al. 2002, p. 154).

The legitimation, deference, and *eunoia* (goodwill) of the Roman imperial authority mostly came from the traditional sources of authority, like personality and personal skills, good family background and education. These qualities allowed imperial authority to impress both the people and the military. In Herodian's view, based on these factors, there was a difference between Marcus Aurelius and his successors. 'Some of them were military tyrants, like Caracalla and Maximinus, others were inexperienced and young who depended on relatives and advisers, and some of them had good intentions, but lacked Marcus Aurelius' good family background, his education, and skills' (de Blois et al. 2002, p. 154).

As witnessed above, it was usually a man of proper descent and qualities who claimed rightful authority and ruled. However, each emperor tried to present themselves as legitimate authority to their subjects. In this regard, coinage served as an ideal medium for making themselves known to their farfetched subjects (Haegemans 2002, p. 466). Despite the fact that some of these emperors ruled for a very brief time and with the use of power and coercion, which does not require legitimacy, the mint of Rome issued coins for them. Maximinus, whose

behaviour from birth was barbaric and who strengthened his rule through violent actions, was always afraid of the fact that the senate and his subjects would loathe him. Through coinage, he attempted to inspire awe and to legitimise his rule. Maximinus even used coinage to present his son Maximus as an intellectual and worthy of being a successor to his rule. The mint of Alexandria, in the first years of his reign, presented his son Maximus as a little boy no more than a child. But later on, the boy was portrayed as a young man worthy of a throne (Haegemans 2002, pp. 470–471). Therefore, coinage seems to have been used by the Roman emperors seeking legitimacy and strengthening their rule.

The above discussion shows that authority – although in ambiguous form – did exist during the Roman empire. But it had traditional, religious, in most cases heavenly sources of legitimation. Another aspect that is worthy of noticing is that authority in those days functioned in parallel to power and coercion. The distinction between authority and power was so blurred that one may get the impression that imperial authority was sustained by power. However, the proof that authority as a concept was not lost on the rulers of that time is evident from their desire to have something more sustainable than power in their efforts in legitimizing their rule. However, on the functional end, imperial authority was exercised differently and, in the case of tyrant emperors (like Maximinus), very often resorted to power and violence, at least in foreign lands.

In contrast, the present-day authorities in global governance have nothing to do with tradition, religion, or heavenly sources of legitimation. They derive their legitimacy from multiple sources, which include formal delegation of authority, consent, global common good, rational voluntary deference, and performance and transparency. These legitimations are not fixed; they are fluid in nature, which means the legitimacy of an authority can be called into question, whereon the authority has to re-legitimize itself by making its working more transparent, inclusive, and human rights oriented. In other words, authority in modern global governance is not eternally given.

This kind of authority in my study is referred to as liquid and reflexive authority. On functional grounds, the modern authorities maintain a clear distinction from power and coercion and the proof of this is exhibited by the fact that new authorities in global governance are not solid, command-and-obedience oriented; they do not work exclusively with commands, but also include requests and suggestions. Their impact and consequentiality are different but are

no less in impact and consequence than any solid authorities. The best example is the rating agencies, which despite being private transnational bodies with no formal claim to authority, can have consequences for entrepreneurs in their choice of production by moulding the behaviour of buyers through their rating of products. These differences between pre-modern authority and modern authority prove my study's hypothesis that authority has changed and developed over time, rather than been lost.

### **Roman Empire: The Case of Two Authorities**

The Roman Empire's unique combination of authority and power running in parallel provides an interesting case for further clarifying the concept of authority in contradistinction to power and coercion. It is a very interesting and unique combination even to think that an entity like the Roman empire had both authority and power (Lovin 2016). Authority, which required legitimation from the Roman citizens, was exercised in the domestic affairs of the empire, while imperial power, which does not require, or in other words does not obligate the rulers to worry about any kind of legitimation, was exercised abroad in holding the empire intact.

On the sidelines, Christianity, through acts of non-resistance and martyrdom, also established its authority against both imperial authority and power abroad, setting a stage for two authorities running in parallel. The tension and struggle between religious and imperial authority during the Roman Empire also helps in answering the question of what Roman imperial authority was. In line with my study's argument regarding the distinction between authority and power, I argue that the moment authority makes use of coercion and violence, it ceases to be authority and becomes power.

However, Robin W. Lovin (2016), as mentioned above, makes an argument that the Roman Empire had both authority and power running in parallel on two different levels (domestic and foreign). This distinction is based on authority having legitimacy while power is less concerned about attaining legitimacy as long as obedience is forthcoming. In a slight contradiction to this line of argument, my study introduces imperial authority as a case of pre-modern authorities and focuses more on the sources and functioning of authority. Therefore, while examining the imperial authority of the Roman Empire, I analyse the grounds and sources of legitimation in order to understand the nature and functioning of Roman imperial authority. In this process, instead of categorizing authority and power as the two different levels of rule

of the Roman empire, I analyse and record the sources of imperial authority which make the authority function differently in Roman domestic and foreign affairs. In my understanding, it is the same Roman imperial authority legitimized by the Roman citizens and grounded in religious and traditional sources which ceases to be authority and becomes power abroad because of the use of force and violence.

Categorizing authority and power running in parallel on two levels is akin to considering them two sides of the same coin, but they were not. It was a solid, traditional command-and-obedience-oriented Roman imperial authority, which failed to have authority the moment it used coercion and violence abroad. Now, if it is called power, tyranny, or dictatorship, it interests my study least, because it is not authority. Therefore, in my study from the very beginning, I argue that if authority has to be defined and understood, it has to be in contrast with power and persuasion, not in parallel with them, to avoid confusion. An understanding of imperial authority in this manner makes it easier for my study to address the question of how the nature, sources of legitimation and functioning of authorities have changed and shifted over time.

Studying how imperial authority was understood, acquired, and legitimated in the Roman empire helps me to highlight the features of pre-modern authority and answer how it is different from modern authority. Both Christianity and the Roman Empire started off weak and in need of supplementing each other: 'Early Christianity in spreading its new faith and word of God lacked authority, but it was aware of its own legitimacy. Whereas the young Roman Empire, ready to assert authority, was uncertain about how to establish its legitimacy' (Lovin 2016, p. 178).

In their struggle, each side borrowed from the other to assert its authority. The later Roman Emperors derived their legitimacy from the divinity of the Christian faith, whereas the catholicity of the church associated itself so closely with imperial authority and its affairs that it started to look like an organisation of the empire. One gained legitimacy for exercising authority and the other got some authority through enacting its religious practices and rulings. This marriage of convenience provided imperial authority not only legitimacy but also natural deference, since obedience to it was now religious and customary (refer to the concept of deference in the introduction chapter).

This religious and customary deference is evident from St. Paul's writing in Acts, quoted by Robin W. Lovin (2016, p. 179), 'Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore, whoever resists authority resists what God has appointed, and those who resist will incur judgement.' Therefore, Roman imperial authority invoked traditional sources of legitimation based on Roman social and religious sentiments and practices. Moreover, at that time, there were also multiple authorities – local, imperial, civil, military, and religious - and all of them had to be honoured in their respective ways to avoid conflict. Again it was Jesus's teachings which were used in keeping any conflicts in check: 'give therefore to the emperor the things that are the emperor's and to God the things that are God's' (Matt 22:15-22 quoted in Lovin 2016, p. 179). Or in another version of translation common in the UK, "Render unto Caesar those things that are Caesar's and unto God those things that are God's". Matthew 22:20-22 The Holy Bible, King James Version.

The church had grown quickly and spread widely, but the empire was changing too. Imperial authority at first rested on conquest but it was maintained by power. The Roman emperors were always keen to establish their legitimacy among the Roman people but seem less concerned about how their authority was perceived in the farther reaches of the empire, provided that obedience was forthcoming. The empire, having gained religious legitimacy, did not worry about its Christian subjects. This fact is also evident from St. Paul's *Letter to the Romans*: 'no reason for Christians to raise questions of conscience about their deference to Roman authority' (Paul's Letter quoted in Lovin 2016, p. 179).

It may seem that the parallel existence of authority and power in the Roman empire is negating my argument that authority must be defined in contrast to power. However, rather than negating that distinction, it shows how pre-modern authority was exercised and legitimated and often conflated with power and coercion. Rome had a tradition of resorting to power and coercion every time there were any political emergencies by appointing a dictator with absolute power. However, 'it had an equally ancient aversion to rulers holding such power permanently' (Lovin 2016, p. 179). This hatred of absolute power and desire to have something more than just power (i.e., authority) does not mean that the Roman Empire was devoid of power. But at the same time, it also does not mean that it lacked authority. It is evident from Augustus, who presented himself to the Romans as *princeps*, the 'first citizen'. However, to

the rest of his vast domain, he was *imperator*, a military title whose holder held absolute power over legions deployed from Gaul to Egypt (Lovin 2016, p. 179). Domestically, he held authority legitimated by Roman traditions and the church, while outside he held power in his command over the empire as a whole.

The relationship between church and empire over the next two centuries reflected developments that changed the 'Roman emperor from an authority legitimated for Romans by Roman law and imposed on others by imperial power to a universal authority, the sole source of law and political legitimacy' (Lovin 2016, p. 180). Rome started a claim to sovereignty in the modern sense.

This understanding of imperial authority came into direct conflict with Christian and Jewish ideas about the sovereignty of God or the universal rule of God. In the beginning, around 112 CE, Christianity was not that big a problem for the imperial authorities to be bothered about. But two centuries later, the church had become a major force in society, thought and culture (Lovin 2016; cf. Sidebottom 2016). The second and third centuries witnessed not only the growth of Christianity, but also rising claims for the universal significance of the emperor and the empire he held. In addition to the titles of *imperator* and *princeps*, Augustus and his successors took on the office of *pontifex maximus* (Lovin 2016, p. 181). The legitimacy this title conferred was a response to those Romans who saw the imperial office as a dangerous innovation.

But such a rise of the Roman emperors to religious significance did not go unnoticed in the wider empire, which was based on cultural and religious polytheism. All kinds of people, Christians, Jews, and even pagans participated in this 'cultural polytheism' (Lovin 2016, p. 181). The fragility of Roman imperial authority in this sense of not having homogeneous subjects was offset through polytheistic religious practices. Christianity obviously saw the Roman empire as a religious cult promoting polytheistic cultural and religious practices, which was disobedient to the catholic beliefs. Christians proclaimed their faith openly, even though the risk of persecution was real. The Roman empire did carry out persecutions but lacked resources to drive the whole movement underground or exterminate its leadership.

What emerged at the beginning of the third century, then, were two rival movements, each of them both religious and political, struggling for the soul of the empire. 'One or the other,



Christ or Caesar, must prevail, both sides agreed on that` (Lovin 2016, p. 183). The contenders were equally powerful. Although power favoured the emperor, who could coerce and if need be, kill, the church had its own way to deal with power: Jesus' teaching of non-resistance and martyrdom. The goal was 'not to grab authority but to suffer under it; not to struggle for the faith, but to die for it' (Lovin 2016, p. 183). The emperor's power to use force and violence became a weapon of its victims. Their fight was not against Rome, nor did they expect their martyrdom to inspire others to fight. They would win the fight by losing it. This was not the kind of conflict that could be resolved by an agreement to live under secular authority in a loose framework of religious pluralism, because once universal claims were made to authority - and they were made by both the church and by the empire - it was obvious that both had to settle, rather than try to prevail over one another.

It was this realization that ensued the period of two authorities. The empire, though powerful, was materially stretched thin and its rulers were always concerned about its fragility. Rome lacked the resources to prevent the spread of Christianity and found itself in constant need of the kind of legitimacy that Christianity, despite its powerlessness, seemed to possess. Therefore, the two rivals became mirror images, each one shaping and supplementing the other (Lovin 2016, p. 186). The two authorities became so closely intertwined that if it was initially expressed that Christ would return to form his own rule, an optimistic Christian could have even seen a Christian emperor as an immediate reflection of the fulfilment of God's promise.

The forms and structure of authority in the Roman empire were established in such a way that the system seemed made for a `Christian ruler who would take authority in the church, placing its teaching and administration under an emperor who, if not quite God, would at least have a special relationship to the one true God` (Lovin 2016, p. 186). It is quite interesting, as Robin W. Lovin (2016) puts it, that without a 'fully developed theology or legal theory to give guidance, two distinct systems of authority achieved legitimacy within the Roman Empire' (Lovin 2016, p. 186).

These two complementary systems of authority were not considered by either side as antagonists. They were part of a larger system of authority established by God. But since they both derived their legitimacy and power from divinity, each struggled to define its authority in a way that gave it the upper hand. The church always emphasized the superior authority of its

priests and advised the emperors to bow in respect before those who have charge of divine affairs and to seek from them the means of their salvation. Therefore, the Byzantine emperors and European kings were crowned by the Roman Catholic church, and they always appointed bishops to address the theological questions. Surprisingly, this arrangement of two legitimate authorities with different kinds of authority in a single political order proved durable. It survived the disintegration of the Roman Empire and provided a framework for a harmonious start of civil and religious authority later.

### **Byzantium: A Roman Empire of the East**

The Roman Empire in the east, which is called orthodox Greek Byzantium, survived for about a thousand years and ruled longer than any other empire in the east, which refers to the centre of the Roman Empire shifting eastwards to Constantinople. It was the continuation of the Roman Empire in its eastern provinces during late antiquity and the Middle Ages, when its capital city was Constantinople. However, during much of its rule the Byzantines were always on the defensive and in conflict over their authority with either the western Roman catholic church or more often and more fiercely with the expanding Islam, which had a stronger appeal and acceptance than their orthodox faith in legitimizing their authority. Despite these challenges, the Byzantines succeeded in expanding their empire and authority among the primitive people beyond the limits of their rule.

As in modern global governance, international authority has a purpose to live up to, namely global peace, the spread of democracy, and dealing amicably with transnational issues, so did the Byzantium empire. However, the nature and purpose of their authority were very different. Their authority was spread and legitimized on religious grounds and even had a spiritual goal. Inherited from the Romans, they believed that their empire 'should expand to the whole civilized world, the *oikoumene* and must spread the true faith (the orthodox faith) and true civilization to all the still uncivilized people of the earth' (Watson 1999, p. 107).

The Byzantine emperor was the sole legitimate sovereign, the viceroy of God on earth, and other rulers had legitimate authority only if delegated by the emperor. The source of his authority's legitimacy was the Orthodox Church, as he was both an autocrat and the head of the Orthodox Church. Therefore, in his vision of empire, the world must be associated politically

with Constantinople – the centre of both the new Rome and the new Jerusalem – surrounded by the Orthodox.

The Byzantine emperor desired universal obedience to his rule and authority. It was believed to be God's plan for the world to take shape under the umbrella of the Orthodox faith and its emperor (Lovin 2016). To this end, it was a perceived duty of the emperor, the clergy, and of the whole Byzantine people to further God's plan as much as they could to spread the Orthodox faith and the authority of the empire. Such legitimacy of a divine and heavenly nature has been used often in the history of authority and empires in the past.

The Byzantine empire was administratively organized not very differently from other empires. It consisted of the heartland, which was mainly Greek Orthodox Christian and was under direct and sometimes through feudal rule from Constantinople. The second tier of Byzantine rule, comprising dominions stretching from Syria and the Caucasus to the Danube and Southern Italy, consisted of diverse races, languages, and cultures. It was based on the formula 'one master and one faith' (Watson 1999, p. 108). One political principle of the empire was not to coerce the conquered people and regions, but to allow them to hold on to their own ethos, customs, and laws, what mattered was loyalty and conformity. However, the larger interest in these areas of dominion was to infuse a common faith, and to this end the empire had put a well-educated priesthood to work, because being Byzantine meant being Orthodox. Not only did the empire desire religious assimilation, but it also worked towards the realization of a desire to bring the subject people gradually to the customs, language, and civilization of the empire (Herrin 2017).

I shall include a brief reference to the Muslim imperial authority, such as that of the Ottoman Empire. Beyond the Byzantine dominions existed some people who were even more challenging to win over – the Muslims. The rise and spread of Islam posed an exceptional challenge to the empire's expansion and assimilation under its motto of one master and one faith. The Byzantine empire, even during the periods of its military strength, was on the defensive against the rival missionary imperial power of Islam in the south and east, which continually threatened and eventually resulted in the end of the Byzantine empire. The two imperial authorities stand evident of the fact that they derived their legitimation from heavenly sources or religion, which is not the case with modern-day authorities, in global governance at least.

One of the most common elements found in pre-modern authorities is that they derived meaning and legitimacy from things and sources outside the range of human deeds (cf. Connolly 1987). Since these preconditions, which shaped traditional authority, have receded in modern global society, there is ontological space for new modes of authorities which are appropriate to modernity. This means that pre-modern authorities must be different from present-day modern authorities and secondly, authorities must have changed, developed, and shifted over time since then. Authority, according to Hannah Arendt (2017) in the first *NOMOS* volume, has vanished in modern global society because its ontological and traditional basis has disappeared. But this cannot be perceived as the disappearance of authority as a concept because it is only true to the extent that traditional authority based on religious and heavenly sources of legitimation has vanished in modern global society.

It is evident from the above discussion that historically, in every age and period, there were a variety of sources to which authorities at that time could appeal in order to claim, justify, and legitimize their rule. It could be the law of nature, or the commands of God, or Platonic ideas or ancient customs, or a great event in the past that could glorify their claim to authority. In all these cases, pre-modern authority derived its legitimacy from things and sources outside the range of human deeds. Central to this world was God the creator, the designer, and the sovereign, whose will was visible to humans, though darkly and imperfectly, in things, events, words, deeds, and living beings that constituted the world. It was a world infused with God's purpose (Connolly 1987; Reeve 2004) The practice of traditional authority was closely linked to faith and this link between faith and authority changed into a link between trust and authority in the modern world. Therefore, it is no surprise that, in the modern world, the decline of traditional authority occurred simultaneously with the retreat of religion, tradition, and even God from the mundane world. Hannah Arendt (2017), was partially right to point out that religion, tradition, and authority engender one another and moreover that the weakening of one in this trio inevitably weakens the others.

In modern global society, authority stands on very different grounds which provide new meaning, definition, and even functionality to authority and it becomes questionable whether these new grounds of authority can any longer derive meaning and legitimacy from something that falls outside the range of human deeds, as was the case with past authorities. This

aspect of how modern-day new authorities claim their legitimacy and function will be discussed in the chapters ahead.

#### **4.2 Conceptual Framework of Authority in Global Governance is Problematic: Analysis of the ‘Problem of Authority’ in Global Governance**

The problem of authority refers to the conceptual framework in which it finds meaning. The problem arises when this framework, scheme, or theory is outgrown, discredited, overturned, or loses meaning and sense with the passage of time in a certain context, such as in global governance (Ball 1987). However, this problem of authority gets worse, when a shift in the conceptual understanding of authority does not occur simultaneously with the changing nature, functions, and sources of authority, as evident from the discussion of pre-modern authority above. Authority is subject to change and, as Hannah Arendt has also said, concepts, in our case authority, have history so understanding authority from the same old conceptual frameworks is often misleading and results in a narrow or even mistaken analysis of authority. A reflection of such analysis can be seen in the scholarly works of Hannah Arendt (2017) and John Schaar (1981), who argued that authority has disappeared. No doubt authorities of the past – *auctoritas* – have indeed vanished, along with the traditional frameworks in which they were located, but this does not mean authority has disappeared in the modern world. Far from having vanished, authority has assumed new, modern, alternative forms. It thus requires redefinition and relocation in frameworks that are radically different from the one that Arendt presented as authority’s original home. This addresses my hypothesis that authorities have changed and developed over time, and in order to make sense of them in the modern world, we should reconstruct, redefine, and relocate authority in modern and more intelligible frameworks.

For reconstructing authority, three broad approaches are usually employed by scholars, separately or in one of two combinations.

1. Historical approach: reconstructing the frameworks in which authority was originally used.
2. Critical approach: exposing limitations and irrelevance of the contemporary frameworks.
3. Reformative and adaptive approach: redefining and relocating authority in modern, relevant, and more intelligible conceptual frameworks.

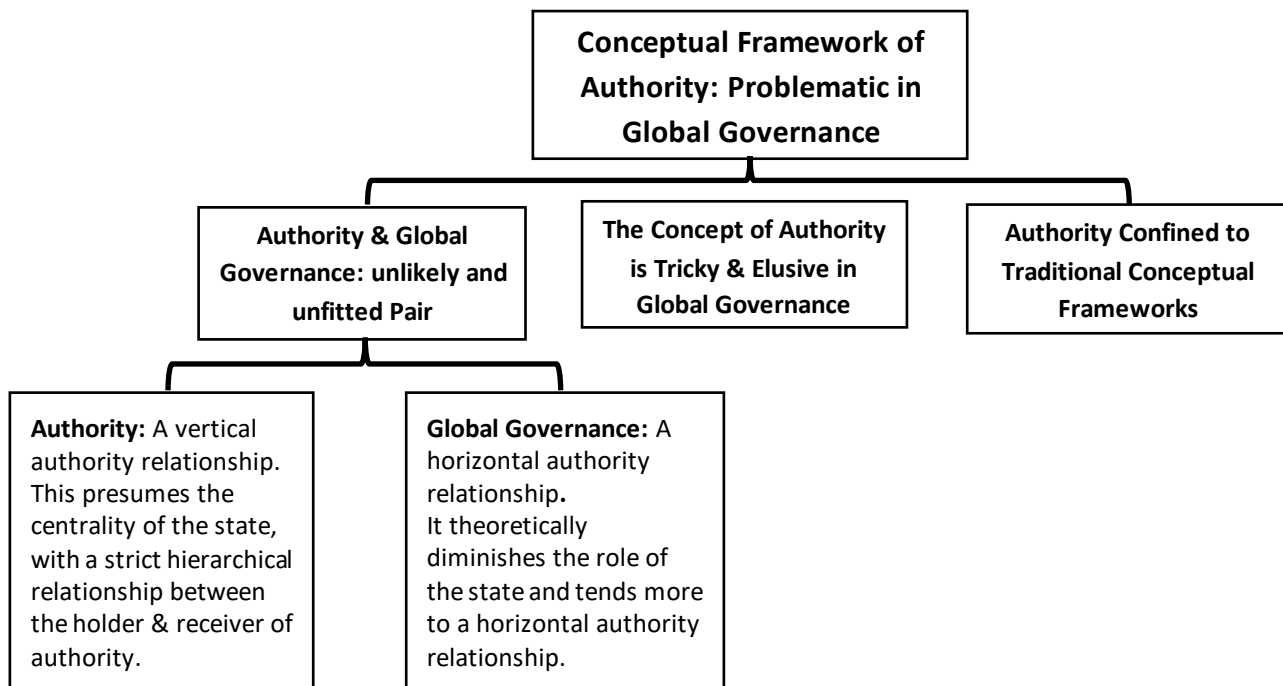
The first and second approaches are employed and third criticized by Hannah Arendt in her contribution to the first volume of the NOMOS series. However, Michael Zürn (2018), Nico Krisch (2010), Joseph Raz (2006), Julia Black (2017), and Terence Ball (1987) employ a reformative and adaptive approach for analysing authority structures in global governance through their concepts of reflexive, liquid, and service attributes of authority. David A. Lake (2010) and Frank Furedi (2013) take on a historical approach by reconstructing authority respectively in social contract and in sociological history traditional frameworks.

My study, 'analysis of the problem of international authority', on the other hand, employs a hybrid method combining all the three approaches: historical approach – tracing how authority, its functions, nature, and legitimation have shifted over time; critical approach – going beyond contractualism, and reformative/adaptive approach; and broadening the conceptual framework of authority to include and make sense of new authorities in global governance. Here, my aim is not to reform or even to redefine the concept of authority, but rather to adapt it to the changing realities of the global governance landscape, where new authorities are at play which do not fall neatly into the public-private authority divide. The nature, functions and legitimation sources of these modern authorities require us to better understand them in a modern, relevant, and more intelligible framework.

The objective of my study is to enrich the existing scholarship on global governance with reference to the concept of authority in a way that a better, more encompassing, and holistic understanding of authority in global governance can be developed. But this is not easy to achieve because the conceptual framework of authority in global governance is problematic, due to which most of the existing scholarship in global governance either provides a narrow and misleading understanding of authority or fails to capture the wide range of new and multiple authorities on the global landscape, which do not fall under the traditional, solid command-and-obedience framework in the imagery of domestic authority.

Therefore, my study takes on the analysis of the problem of international authority in order to better understand the reality of authority in global governance and to broaden the conceptual framework to new and multiple authorities. The conceptual framework of authority in global governance is fundamentally problematic in the following three ways: first, authority and global governance are an unlikely and unfitted pair. Second, the concept of authority

becomes tricky and elusive in global governance. Lastly, the understanding of authority in global governance is confined to traditional conceptual frameworks.



*Figure 9: Conceptual Framework of Authority is Problematic*

Authority in global governance needs reconceptualization and recontextualization on broader level away from the state and domestic authority model. Authority and global governance appear an unfitted and incompatible pair when the former is integrated in global governance as is, i.e., in the solid command-and-obedience framework directly borrowed from the state model. In the traditional concept of authority, the state and a vertical authority relationship are at the core, while in global governance the role of state is presumably diminished and a horizontal authority relationship among actors can be seen. This problematic characteristic of the conceptual framework of authority in global governance leads to a concern that global governance scholarship may have adopted the narrow traditional, state-centric, command-and-obedience-oriented, contractual understanding of authority unchanged for its own use.

The concept of authority becomes tricky and elusive on the global governance landscape, given its incompatible definitions and partial or narrow understanding borrowed from the state model. It is usually difficult to clearly define, locate, and measure authority in global governance in clear contradistinction to power, force, and influence. This problem arises mainly due to the fact that the global governance literature adopts the traditional concept of

authority almost unchanged, as evident from my literature review chapter. The factors that contribute to the narrow and misleading understanding of authority in global governance include the contractual understanding of authority in the state and domestic authority image, treating authority in a strict command-and-obedience framework of solid authority, and considering the authority relationship to be vertical and singular, rather than horizontal and multiple.

What is needed here is to broaden the concept of authority and go beyond the solid and contractual understanding of authority by relaxing these assumptions relating to authority, because, in the words of Krisch (2017), solid authority under a strict command-and-obedience model with a contractual or power delegation basis is not the only form of authority. Such a solid authority perspective is relevant in global governance only when speaking of state global governance institutions in the sense of inter-governmental political institutions. Global governance institutions which do not fall into the category of state global governance institutions (refer to Figure 2) would fall out of its scope, resulting in an inadequate and partial understanding of international authority. In reality, authority in global governance is more relational; it is more interactive and appears in different forms outside of contractual and formal delegation, with different behavioural implications. It is thus more complicated to understand under a simple command-and-obedience framework of solid authority.

Therefore, in the face of authority being confined to traditional conceptual frameworks, the notion of authority needs to be reconstituted and broadened in order to better understand and encompass the different forms of authority in global governance. This will enrich the existing literature on global governance and overcome the dilemma around the incompatibility of authority and global governance. In this regard, my study makes combined use of the concepts of liquid and reflexive authority<sup>10</sup> (Krisch 2017; Zürn 2018).

Krisch's conception of liquid authority refers to the multiple, new, and unconventional forms of authorities that have emerged on the global governance landscape, with the aim of

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<sup>10</sup> Liquid authority refers to authority's high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and control in global governance. It tends to undergo changes and acts strong in some issues and weak in others. Under the liquid conception, authority is understood in the sense that it flows, does not have a fixed shape and is difficult to explain under predefined frameworks and within the two-pole public-private authority constellation. The reflexive concept of authority (Zürn 2018) refers to authorities which are marked by a constant legitimation cycle, and which do not draw their legitimacy from traditional sources like the right to rule or any other contractual or de jure arrangements.



broadening the understanding of international authority and addressing the problematic characteristic of its conceptual framework. The reflexive concept of authority is marked by a constant cycle of legitimation, where deference to authority is extended based on the quality of its services. Both of these approaches enable us to understand authority on broader lines, which result in making sense of the multiplication of authorities.

The liquid authority concept can serve as an alternative model to investigate global governance structures and institutions and develop an understanding of different authority relationships and arrangements that stay out of sight in the traditional, solid imagery of authority. One of the advantages of the liquid concept of authority is its claim that authority is not necessarily formally delegated, but rather is the result of an ongoing social process. However, on the other hand, the need for new authorities to face constant legitimacy claims is reduced because liquidity conceals its exercise. It is, therefore, possible to pin an actor as an authority at a specific point in time and across a particular issue, because its fluid characteristics as an authority are constantly undergoing change and development. Focusing on the liquid characteristics of authority broadens the understanding of authorities in global governance and draws scholarly attention to new authorities which are in a constant legitimation cycle and are not subject to global responsibilities and accountability. Switching the theoretical lens from solid to liquid and reflexive authority enables us to focus on the actors and draw up an image of authority that does not seem to be borrowed from the traditional state model of hierarchy or centralization.

For this purpose, a deference model is more useful than a command-and-obedience or contractual model in understanding the authority relationships in global governance, so that the authority holder is no more supposedly absolute and may not even be singular if the purpose is to make sense of the newly-emerged multiple authorities. In this regard, my case studies on multiple and new authorities, which do not fall neatly into the public and private authority constellation will be useful in understanding the liquid and reflexive characteristics of authorities in global governance.

#### **4.3 Contrasting Different Models of Authority: Deference is not the Same as Obedience, and Consent and Authority is not the Same as Legitimate De jure Rule:**

The traditional understanding of authority is usually presented in contrast with anarchy, where authority is built around a central government (domestic), equipped with binding

powers and enforcement tools (Krisch 2017). The contractual and solid understanding of authority is commonly derived from the traditional model of modern state authority and governance. In this regard, Max Weber's (1978) concepts of *Herrschaft* and *Autorität* are usually employed, concerning hierarchical relations of superiors and subordinates and commands and rules that are intended to invoke compliance. The traditional model of authority is, first, typically associated with the state and, second, to a de facto authority, where the ability of the state to compel those who do not go along with state commands follows three alternative conceptions of authority: justified coercion, assigning duties to subjects, and invoking a right-to-rule clause. (Krisch 2017). This is a typical, hierarchical, command-obedience model of authority stemming from the state.

The significant flaw in this approach can be seen in global governance, because it results in a partial, one sided, and narrow focus on a specific set of international institutions with solid or political authority. Such institutions have legally binding authority, formally delegated to them with the ability to also use enforcement tools. Many international institutions possess these elements but the study of authority in global governance focuses on only a few such organisations which have strong formal powers. The UNSC or WTO Dispute Settlement Body are cases in point.

Studying and understanding international authority under a contractual solid authority framework is important, yet only a small part of the international authority landscape. With its formal and legal focus, in terms of delegation of authority under a contractual arrangement, it overstates the analogy with the traditional domestic government. At the same time, it misses on the many forms of the newly evolved authority in the modern global society (Krisch 2017). These new authorities might be highly consequential and intrusive, yet they are neither solid and absolute nor do they operate through formal legal tools of delegation or social contract. There have been some attempts to touch upon these diverse forms of authority in world politics, but few of them have been successful; Zürn (2018), Krisch (2010), Mende (2020) and others, such as Lake (2010) and Furedi (2013) have run into inconsistencies through failing to broaden their conceptual framework of authority.

The deference model is sociologically inspired, for it attempts to study authorities in broad and different settings, public and private, beyond the formal governmental institutions of the modern state (Flathman 1980; Friedman 1990; Krisch 2017). Therefore, my study, building

upon the deference model in studying international authority, is designed in two parts dealing with two interlinked hypotheses. First, it sets out to understand the concept of authority in history to emphasize that the nature, functions, and sources of legitimation of authority have changed, shifted, and even developed over time, making the conceptual framework of authority problematic in making sense of new authorities in modern global governance (refer to Chapter 4, section 4.1). Second, it analyses and understands the multiplication of authorities beyond the solid and public-private authority constellations through case studies of new authorities in global governance.

An accurate understanding of authority will help in redesigning questions regarding the problem of international authority and, at the same time, it will lead to diversifying our approaches to the general study of international authority. In this regard, my use of the deference model, with its sociological orientation, covers not only historical phenomena, like the shifting sources or functions of authority, but it also tries to shift the focus and reorient approaches the study of international authority.

My study focuses, like those of Zürn (2018) and Krisch (2017) on the empirical grounds of the plurality of authority structures which have emerged in the contemporary world from social processes without any formal or legal basis, and which often function on non-traditional and informal sources of legitimation (Furedi 2013). Therefore, my two sets of case studies – one on pre-modern authorities, focusing on the changing and shifting nature, sources, and functions of authority over time and the other on new authorities in global governance - provide a balanced empirical insight into my research questions.

Since authorities in modern global society have grown beyond solid contractual frameworks, the study of international authority and its problems of legitimation should likewise be carried beyond the contractual model of formal, legal solid authorities and establish a clear distinction between international authority and domestic state authority.

The deference model has recently begun to gather traction in global governance studies, with attempts at a broader conceptualization of authority. These attempts remained isolated, yet paved the way for more recent, broader attempts at reorienting the concept of authority beyond coercion and the command-and-obedience paradigm. Authority, as the legal capacity to direct others and to reduce their freedom, has been redefined by most recent global

governance studies scholars. They have focused more on the relational aspect and have employed the deference model in understanding authority as ‘the ability to induce deference in others’ or as ‘deference of one’s own judgement and choice to a recognised authority without being necessarily forced to do so’ (Krisch 2017, p. 242; Zürn 2018).

Authority as in ‘ability to induce deference’ is a broad concept; therefore, it is distinguished from other forms of power or influence (particularly power and persuasion).

Deference comes with some levels of content-independence, which is different from acts that result from coercion or substantive persuasion. It leads to a relation that is broader than a mere one-off exercise of power in that it claims that the ability to induce deference is based on a (logically prior) recognition of an actor or process as authoritative (Krisch 2017, p. 242).

In this sense, a functionalist understanding of authority based on consented commands and obedience can be true in the case of state authority, but it fails to make sense of authorities in global governance.

In the deference model, the sources of recognition or legitimation of authority can be different and many. One typical aspect of authority under the deference model, as Zürn (2018) explains, is that recognition cannot be based on an attitude or act of the individual subject, such as delegation or reflexive acceptance, but it will usually also have a social dimension. The bottom line in the deference model is that the recognition or legitimation of authority comes through a social practice that does not necessarily depend on the attitude of the subjects or addressees of the authority. However, ‘for an individual actor (state), deference to an authority (IAEA) may thus seem involuntary if the authority is based on recognition by other social actors (USA/UNSC) who impose costs (or withhold benefits) in cases of non-compliance’ as in the case of Iran (Krisch 2017, p. 242). In this regard, Ole Jacob Sending (2017b, p. 317), provides an explanation: ‘the terms on which recognition is based are the result of social interaction (as shown in a figure below) and will often not be at the disposal of the individual actor (USA)’.

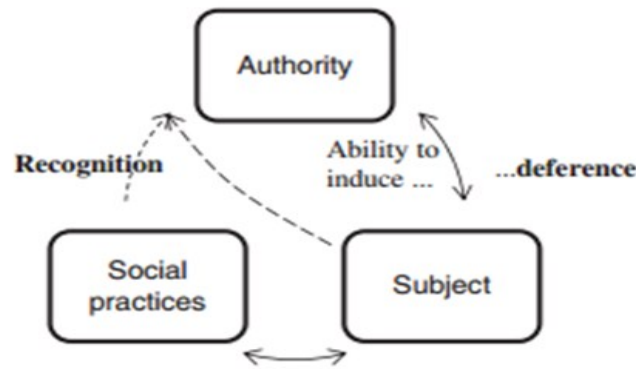


Figure 10: Authority and Deference: Source (Krisch 2017)

Studying authority under the deference framework, rather than the contractual or command model, broadens the conception of authority, allowing for different forms of authorities (especially liquid and reflexive) to enter the picture. It helps in understanding the sources and functioning of multiple authorities in global governance, thus extending the scope of study to sources of legitimation that are not based on delegation, social contract, or other traditional notions like right to rule. This leads us not only to explore the different forms of authorities, but it also helps in diagnosing to a greater extent the problem of authority in global governance. However, in cases of formal delegation of solid authority, we may find lesser accuracy in diagnosing the problem of authority if societal recognition (or what Zürn calls Reflexive legitimation) is absent or weak (Krisch 2017).

**Deference is not the Same as Obedience or Consent and Authority is not the Same as Legitimate De jure Rule:**

Deference is not the same as obedience or consent and authority is not the same as legitimate de jure rule. To understand this, one must distinguish between different kinds of authorities, and the best way to do that is to start with Richard B. Friedman's (1990) concept of authority. He differentiates practical authority from theoretical by arguing that the exercise of authority can have influence over both the beliefs and the behaviour of the subjects. Therefore, he classifies authority in two forms; 'to be in authority' and 'to be an authority' (Friedman 1990, p. 57).

To be in authority refers to practical authority, where a person or organisation occupies some office, position, or status which gives them the right to make decisions on how others should behave. Such an authority relation has behavioural implications. 'To be an authority' refers to

theoretical authority, where a person or organisation is considered to be an authority on something by virtue of their expert knowledge and services in that specific area. Such an authority relationship influences the belief system of people and society at large. In Friedman's approach, authority is principally defined as legitimized power. Such an approach, however, runs the risk of mixing authority with coercion. Therefore, beside his differentiation between being 'in authority' and being 'an authority', the classification of practical authorities in a de jure and de facto sense, which differentiates between coerced and non-coerced deferential obedience, provides good grounds for one of my hypotheses, i.e., that deference is not the same as obedience or consent and authority is not the same as legitimate (De jure) rule (see the figure below).

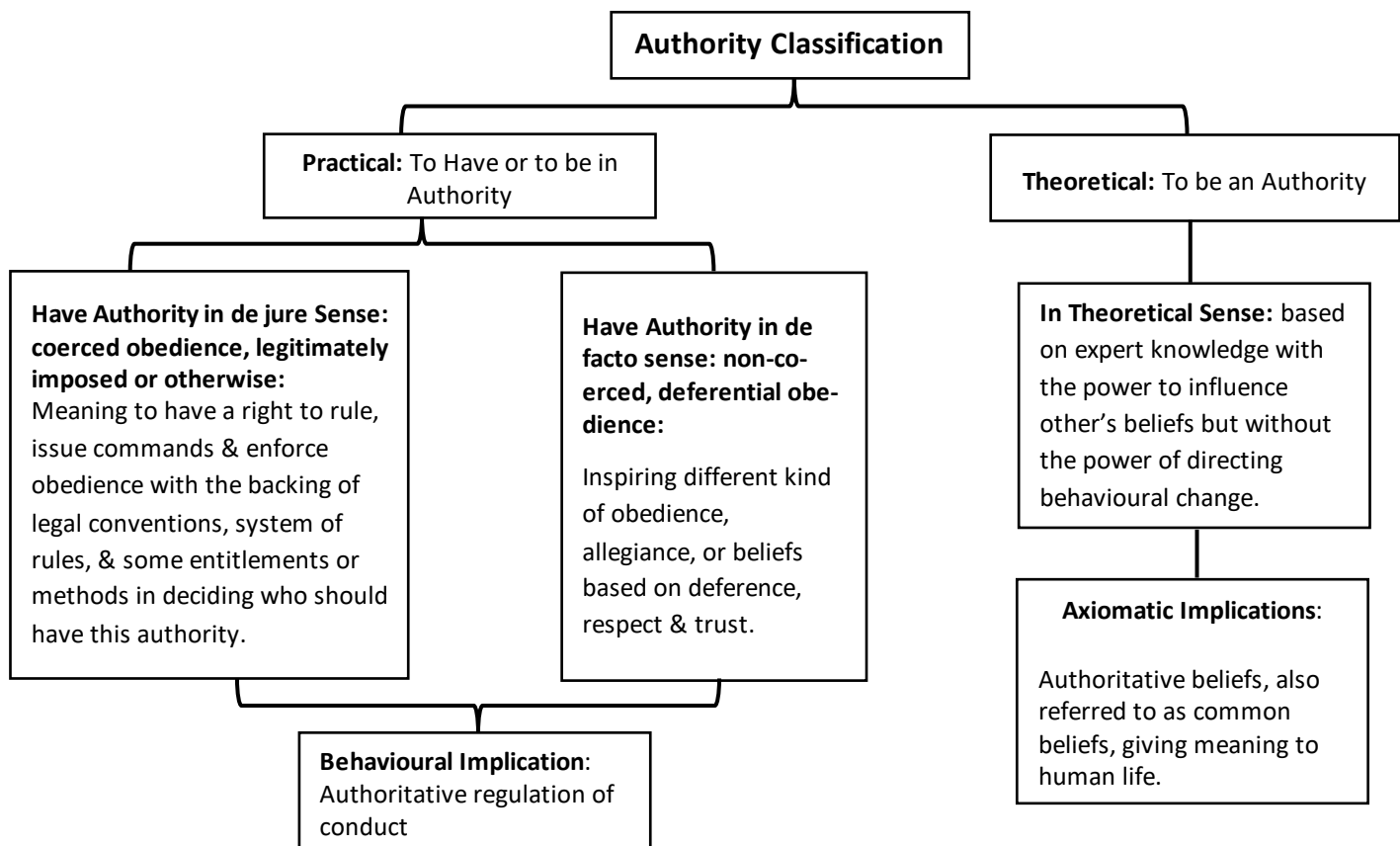


Figure 11: Classification of Authority

These two types of authorities, to be in authority and to be an authority, with their different grounds of justification and function, should not be confused with one another; each has a different nature, function, and grounds of legitimation, so each claims authority on a different rationale. To have someone 'in authority' is an arrangement to remedy a predicament which

arises whenever people fail to agree on what should be done. To avoid conflict, with each insisting on their respective judgement and opinion, there must be an agreement about who is to decide what should be done on behalf of the rest of people (a typical contractual rationale) (Friedman 1990, p. 77).

However, like the contractual model, it insists on giving up one's own judgement and instead accepting someone else to make binding decisions for all by deciding through some procedure such as election, delegation, lottery, or hereditary claim who should have the right to make such decisions. This shows that the authority relationship in this sense is an arrangement to gain agreement at the procedural level (election/consent) in the face of disagreement at the substantive level by defining whose judgement is to be considered as public and whose is to be considered as private. The recognition, submission, or surrender of private judgement can be seen in two forms,

because there is a difference between the case in which a person submits to authority without evaluating it based on normative validity (right to rule) and the case in which a person does evaluate and judge, but submits anyway, irrespective of his own judgement. In the former case, what is surrendered is judgement itself; the subjects do not question and evaluate but simply obey. In the latter case, what is given up is not judgement but choice; the subject diverts from acting on his own judgement, even though privately he may not approve of authoritative directives' (Friedman 1990, p. 72).

However, private judgment is not a judgement over private matters; it is rather a non-authoritative judgement which can be highly political in content but is nevertheless not authorized to direct behaviour (Friedman 1990, p. 79).

On the other hand, the rationale behind 'to be an authority', or the claim to authority in this case, is not based on the grounds of being put in authority under an established procedure, but on the grounds of special knowledge, wisdom, expertise, or insight. The factor that develops the rationale or claim of authority in this case is that something accessible to one person is inaccessible or inadequately accessible to others (Friedman 1990, p. 80). A typical example of this type of authority, and one that has long been given, is that of religious authority, either of priests or prophets. Historically, the concept of authority – *auctoritas* - as seen above in the discussion of pre-modern authority was borrowed from Roman political thought in order

to give meaning to the special status claimed by the papacy; 'what is evil and what is not evil in the Christian world...can clearly enough be pronounced only by those who are in a special sense qualified to speak on this crucial issue' (Ullmann quoted in Friedman 1990, p. 80).

Likewise, an authority's claim to be deferred to is logically independent of them 'having authority' and this differentiates it from the case of being 'in authority'. In the latter case, a claim that the authority should be deferred to arises from the fact of them being in authority by the right to rule or due to legal conventions and political procedures like election or delegation of authority, which means if they lose that privileged position then there remains no reason to defer to them. In the case of 'to be an authority', one claims authority because of special knowledge and expertise: if people do not recognise this authority, it does not mean that the special status ceases to exist because others do not acknowledge it, at least in the theoretical sense of 'to be an authority'.

Most of the new authorities and the epistemic authorities in global governance, which also claim authority on their specialised knowledge, expertise, and worldwide acceptability in specific fields do cease to have a legitimate claim to authority or standing when their role is subject to de-legitimation or is not recognised. In short, the authority relationship between a person who is 'in authority' and the person who defers presupposes a quite different context than is presupposed by the relationship between someone who is 'an authority' and the person who defers to them. In the latter case, it is a belief system and the recognition of one's own limited and unequal capacity for understanding and rationality. In the former case, it is a predicament of conflicting beliefs and disagreement. Therefore, in the diagram above, I have categorically differentiated between practical and theoretical authorities, a difference which at times gets blurred in the international context. New and domain-specialised authorities in global governance, like the WHO, FATF, IAEA, and some others, claim in parallel to be both 'in authority' because of the authority delegated to them and 'an authority' because of their specialised knowledge and expertise in a given area of concern, like that of the IAEA in the area of global nuclear proliferation.

Such an advanced categorization of authorities, both de jure (legitimately imposed and coerced obedience) and de facto (expert knowledge epistemic), clarifies the complexity of authority in the face of multiplication of authorities in global governance. But this is not enough in adapting the conceptual framework to fit such new authorities, which go beyond the



contractual, solid command-and-obedience framework and do not fall neatly into the public and private divide.

The term 'authority' is often understood under the right-to-rule principle as an entitlement to give commands, make decisions, and enforce obedience. Such an approach considers authority in the *de jure* sense, with the belief that it is backed by legal conventions, a system of rules, or entitlement methods that determine who should have this authority. In this case, authority stands on coerced obedience (legitimately imposed or otherwise) (Friedman 1990, p. 60).

But at the same time, 'to be in authority' can also be found in a *de facto* sense, where it inspires a different kind of obedience, allegiance, or belief based on deference, respect, or trust. Here, authority is backed by non-coerced deferential obedience, which helps in differentiating it from other methods of securing obedience, such as the threat of the use of force or the offer of rewards – security and welfare. Authority in a *de facto* or deference sense is neither similar to that in the *de jure* sense nor is it the outcome of the recognition of that authority. In fact, an authority may receive deference from others either because they recognise and respect its legal right and position to govern or because of personal qualities; one can have authority in both forms. It is often said about the famous French President, Charles de Gaulle that he had authority in the Fifth Republic, partly because his *de jure* authority was recognised and respected and, partly *de facto* because he was a charismatic leader who could inspire deference on his own account (independent of his legal and *de jure* position) (Friedman 1990, p. 61).

It must be understood from the above argument that to have authority in the *de jure* sense of the right to rule does not necessarily translate into a fact that someone has or will have effective authority if it is devoid of deference. If those under someone's authority acknowledge their position but fail to comply with their commands, they lack influence and authority in the *de jure* sense: or, if they obey only out of fear of punishment or hope of reward, he lacks authority in the *de facto* sense.

Similarly, if someone in a position of power employs force to secure obedience, regardless of whether he possesses it rightfully or otherwise, the compliance and obedience that is

achieved is not out of respect for his authority. The same can be argued about the principle of 'legitimate power'. For instance:

X obeys Y sometimes means that X obeys because he considers Y to be a legitimate power in command, but at other times it means that Y forces X to obey him using coercive power or contractual arrangements of agreed obedience which are considered legitimate by X himself. (Friedman 1990, p. 62)

In the first case, obedience is voluntary, and legitimacy serves the purpose of providing rationale to the question of why the subject obeys. In the second case, obedience is coerced/compelled, and the term legitimacy serves a very different purpose, which is to point out the fact that the use of coercion is legal and approved.

The problematic character of authority pointed out here also refers to present day phenomena, where the fundamental difficulty with the term authority arises when it is interchangeably and confusingly used in the political discourse for explaining paired concepts. On the one hand, it is used to differentiate between the legitimate and illegitimate use of coercion. On the other hand, it is used to distinguish between coerced obedience (either legitimately imposed or otherwise) and non-coerced, deferential obedience. For instance, we often hear in the case of troubled countries that the law-and-order situation broke down. This may mean that respect, trust, or deference to the government and system has collapsed, although people might still be holding positions of authority and some people may still be found obeying them out of fear of punishment, self-interest, or bargaining. Or it may mean that those in authority who are legally empowered to maintain order have failed to do so, despite the use of force and threat of punishment. This shows that 'authority' is used in two senses: first, to refer to the rightful use of force in securing obedience; second, to give meaning to a different mode of submission or obedience that does not employ the use of force (deference model).

Here, the purpose is not only to make an argument that it is wrong to use the word authority for legitimate power or legitimate use of force, but rather to essentially distinguish authority from power and coercion. To consider authority only as legitimate de jure rule in state imagery would result in omitting authorities in global governance in the de facto sense, which are non-coercive, with no legal character, and are based on deferential obedience. In this sense, I also refer to different kinds of authorities with different legitimation sources, and

their explanations of why people respond and obey differently to different authorities in different arrangements.

Therefore, I argue that deference is not the same as obedience or consent and authority is not the same as legitimate (de jure) rule. It is for this very reason that my study attempts to understand and explain authority in a wider context, beyond formal-legal and contractual frameworks, on the grounds of authority relations embedded in the deference model by looking at the behavioural implications of authority – how consequential, not consequential, or different consequential authority is – in global governance in dealing with different transnational issues.

#### **4.4 The Rise of New & Alternative Forms of Authorities in the Modern Global Governance Structure: Liquid & Reflexive Characteristics of Authority**

The understanding of authority in modern global governance structures demands the identification of informal and extra-legal forms of new authorities beyond the formally established and traditional governance structures. Such a broader understanding of the concept of authority in modern global governance is provided by the liquid and reflexive concepts of authority, which allow one to perceive the normativity created by the action of actors as capable of generating authority elsewhere.

My study analysing the ‘Problem of International Authority’ in an interpretive comparative historical analysis approach, links the problems of present-day international authority with its changing nature, sources and even functionality, where it is confronted with new and different kinds of legitimation problems. A broader approach to the study of authority, which includes alternative forms of authorities – liquid and reflexive – immediately allows one to observe the unique characteristics of authority in global governance, which actually distinguish it from the traditional contractual, solid sites of authorities (government).

By liquid authority is meant the liquid characteristics of authorities, which make them dynamic, moving between and beyond the public-private authority constellation. These authorities are often difficult to locate or cannot be neatly classified across the public and private divide, as they might appear to be private entities but perform public functions. The reflexive characteristics of authority refer to authorities which have a basis in epistemic or expert knowledge but lack any solid legitimation grounds and are thus subject to a constant cycle of

legitimation. Authorities in global governance with reflexive characteristics have to continuously gain legitimacy based on their expert knowledge and services.<sup>11</sup>

The notion of liquidity is a defining characteristic of authority in modern global governance and is what Krisch (2017, p. 243) calls a 'radical implication of understanding authority on the deference model'. When authority is separated from ideas of command, delegation, and formally binding obligations, it is dispersed over multiple actors and its recognition or legitimation comes from different sources, procedural, or substantive. Instead of being concentrated in a single, solid, and commanding institution, authority might then be spread over a process within which it is hard to locate.

Authority in this regard might be liquid in the sense that it flows, does not have a fixed shape, and is difficult to explain under a simple command-and-obedience kind of framework. But this does not mean that it is 'less weighty or impacting'. Liquidity here refers to 'degrees, just as in physics, it is not a binary opposite of solidity' (Drezner 2013 cited in Krisch 2017, p. 244). It is not a contrast of the two forms of authorities on the scale of being consequential or not consequential, but in fact, liquid or reflexive authorities can be highly consequential. The significant feature of liquidity is its dynamism. The more liquid an authority structure is, the more its elements are in motion; the more it is subject to social change and the more difficult it is to locate an authoritative site of decision-making. The degree of dynamism depends on the stability and extent of social recognition practices (Krisch 2017). Since, under the deference model, recognition of authority comes from social practices that may be independent from an individual addressee's response to authority, we can observe different practices coexisting. Both Zürn (2018) and Krisch (2017), have recognised different sites of authorities in global governance, characterized by competition and contestation.

In the global governance structure, there are certain complexities and limitations when it comes to establishing sites of solid consolidated authority, like those existing in the case of modern state constitutional institutions. First, due to the absence of formally established solid

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<sup>11</sup> Liquid authority refers to authority's high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and to control in global governance. It tends to undergo changes and acts strong in some issues and weak in others. Under the liquid conception, authority is understood in the sense that it flows, does not have a fixed shape and is difficult to explain under some predefined frameworks and within the two-pole public-private authority constellation. Whereas the reflexive concept of authority (Zürn 2018) refers to authorities which are marked by a constant legitimation cycle, and which do not draw their legitimacy from traditional sources like the right to rule or any other contractual or de jure arrangements.

governmental powers in international affairs, authorities and institutions are linked to informal norms. Second, creating solid authority on a formal legal basis is difficult, because of the significant cost to sovereignty and the great number of consensual actions of government required. Lastly, the formal-legal delegation of significant powers is rare and limited (Krisch 2017). Even when it exists, it is subject to frequent institutional competition and lacks actual recognition, as explained in detail by Zürn (2018) in his 'counter-institutionalization' argument.

In this context, a significant level of liquidity is an obvious characteristic of international authority across many issue areas, where different actors are seen competing or cooperating without any strong formal basis of powers and are in continuous struggle for legitimation and readjustment. This reflects the first complexity of the global governance structure, the absence of the formal solid basis of governmental powers and the ultimate reliance on informal norms.

Despite these complexities, authority is in high demand; actors in the global governance (governmental IGOs, like IMF, and non-governmental like Amnesty International) all need it to realize their objectives and deal effectively with transnational problems. No wonder they turn to alternative forms of authority in realizing their global goals in the face of the absence of formal-legal basis and the extensive consent of governments.

This reflects the second complexity. The difference between these liquid and reflexive authorities in global governance and the solid contractual authorities of national governments is that the latter provides laws and rules with huge enforcement power. The former, especially in the case of Politically Assigned Epistemic Authorities (PAEAs) (like the IAEA & WHO) and private NGO-based epistemic authorities (like Transparency International, Amnesty International, & HRW) work as regulating agencies or define best practices and monitor global affairs (Zürn 2018). Therefore, where public regulation is missing or is not sufficient, the private sector takes over and sets norms, resulting in the multiplication of authorities in global governance. In this way, the sites of governance and authority multiply, making the whole authority structure highly complex, decentred, and subject to recurrent shifts, with private authorities predominantly performing public functions (refer to the case studies on new authorities below).

In this situation, solidity – or a high degree of consolidation - seems to be more of an exception rather than the norm or rule. Likewise, studying the international authority or global governance structure from the old command-and-obedience or contractual lens would oversimplify the subject at hand. It is not that solid authority does not exist at all in the global governance structure; it is just rare and can be seen in technical areas or owe its existence to historical crisis, where governments set aside their concerns about sovereignty costs.

This reflects the third complexity of ‘formal-legal delegation of powers being limited or circumstantial. In highly political areas, the formal delegation of power to some central institutions is either favoured by hegemonic actors or is the result of crisis that lowered their concerns for sovereignty costs’ (Krisch 2017). The creation of bodies like the UNSC, IMF or the WTO’s Dispute Resolution Body are examples of such formal delegation of powers and sites of solid authority. Here again one can observe that the solid authority arrangement overshadows the liquid authority structures, in which authority over issues is often contested and has to be regained in competition and cooperation with other sites (Sending 2017b). Thus, the bottom line is that in most of the other sites of global governance, authority will still be liquid and reflexive. This shows that the formal-legal delegation of powers is rare, limited and at best circumstantial.

In the absence of legal powers, authority in global governance is established informally, through governmental or private actors. Informality does not necessarily translate into authority being weak and not consolidated: the international Standardization Organisation and some of the rating agencies are cases in point. However, informality and liquidity make more difficult the process of claiming deference from addressees and authority more vulnerable to challengers. In this context, ‘the islands of relatively solid authority’ are likely to emerge conditionally; when a favourable social constellation in the form of convergence of interests and ideas, or a preference for coordinated action, meets institutions which succeed in achieving and sustaining recognition because of their expertise, principles, leadership, or capacity (Krisch 2017, p. 247). In this way Krisch’s (2017) argument is furthered by Zürn (2018) in his reflexive conception of authority, because here solid authority’s existence and its recognition is reflexive of institutions’ expertise and capacity.

Authorities that are established in this way, are perpetuated through, what Zürn (2018, p. 64) calls ‘path dependence and normalization’ like the membership of the UN Security Council,

neither including nor excluding the actors based on their weakening positions (like that of France) or strengthening positions (like that of Japan/Germany) in global world order. However, the growing challenges from rising actors and rival institutions have made it vulnerable and at risk of being liquefied (Krisch 2017). A global governance without the central coordinating institutions (which Zürn calls loosely coupled spheres of authority), the liquidity of authority is set to be high. But this does not necessarily mean that the global governance structure only consists of liquid authorities or that authorities are equally liquid in every segment of the global governance. One can expect a significant degree of variation across different issue areas. Important is that we expect and understand these new and alternative authorities to have evolved in the modern global governance structures.

Solid authority is more a modern state phenomenon. In the past in some places and periods, a high degree of consolidation can be observed, but then the elements of societal challenges and institutional competition were never absent (Krisch 2017). A detailed discussion on this aspect has already been taken up in the pre-modern authority section above. There the study showed some of the struggles more over the site of authority as in the case of competition and infighting between secular and religious rulers or monarchy and clergy during the Ancient and Medieval times, than the control of authority (a more present-day modern states phenomenon). The increasing consolidation in the modern state has resulted in authority's representation in solid terms, with state being the focus of attention. Thus, most of the political theorizing particularly with reference to authority and governance is carried in the state and government image, which on global level leads researchers into oversimplification of international authority structures (Krisch 2017). The constitutionalized/contractual authority of rule based has in the last decades lost relevance and importance. Nowadays, specialised authorities (liquid and reflexive), somewhat independent of constitutionalized rule and the use of force, have become significantly relevant and important in the global governance.

### **Reflexive Authority: A Broader Understanding of International Authority Structures:**

On the grounds of shifting sources and legitimation narratives of authority in modern global society, as one of my central research questions with regard to the 'problem of international authority', we also make use of Zürn's reflexive authority concept, because reflexive authority helps in understanding the relationship between international institutions (which exercise international political authority), and states. Zürn (2018), argues that the authority relationships

in the global governance system are mainly reflexive, meaning they derive their legitimacy from their expert knowledge-base and services and thus are subject to change and a constant legitimation cycle. Such authorities in global governance are referred to as 'epistemic authorities' by some scholars, like Zürn (2018). Focusing on the reflexive characteristics of authority helps in understanding the authority structures in global governance on a broader level, without falling into the framing traps of solid, contractual, or formal delegation of power models. Reflexive authority and its legitimation are based on epistemic foundations. In the global governance system, there are mainly three broad categories of international authorities. The first is the political international authorities or institutions with authority to make and enforce rules, like the UN Security Council:

Political authority rests on the acknowledgement that there needs to be an institution that is authorized to make collectively binding decisions in order to promote the common good and to prevent chaos. The political authorities thus have the right to make decisions that violate the particular interests of members in the short term. (Zürn 2017, p. 51).

Second, there are epistemic international institutions with monitoring and regulatory authority. They provide interpretations that modify the behaviour of others. Epistemic authority rests on expert knowledge and moral integrity. The epistemic authorities on the global level can be further categorized. His first category are institutionalised epistemic authorities, which Zürn (2018), calls 'Politically Assigned Epistemic Authorities' (PAEAs); examples of such authorities are the IAEA, WHO, OECD, and the most recent one, the Financial Action Task Force (FATF). The states delegate authority to them to carry some regulatory and monitoring functions in the areas of global concern and come up with interpretations and valuable information. The other category of epistemic authority is the private sector, i.e., the NGO-based epistemic authorities, which include Transparency International (Global corruption monitoring), Amnesty International and Human Rights Watch (Humanitarian monitoring and alerting the world to human rights violations). The third category includes private business authorities, which have recently also been identified as transnational hybrid authorities because they also claim authority on the basis of their expert knowledge and services. Some of these private business authorities are big tech companies like Facebook, outer-space private research and



exploration companies like SpaceX, and private military security companies or contractors like the notorious American Blackwater.

These authorities make interesting case studies for substantiating my study's argument that there are new actors at play in global governance which exercise international public authority and go beyond the contractual, solid command-and-obedience framework and do not fall neatly into the public-private divide because they retain their private identity but perform public functions (Mende 2020). These authorities show both liquid characteristics (they move in between and beyond the public-private authority constellation) and possess reflexive characteristics (they lack legal character or solid grounds of legitimation and are thus in a constant legitimation cycle). These are new authorities which are not encompassed by existing state-centric, solid, and contractual authority frameworks in global governance. Detailed studies of the nature, legitimation, functions, and consequentiality of these authorities are provided below in my case studies.

These new authorities with liquid and reflexive characteristics derive their legitimation from two sources: first, from their expertise and knowledge in a specific issue area; second, from the acknowledgment of the addressees' own limits of rationality regarding the lack of either information or a perspective that allows for the pursuit of common goods. As Zürn, puts it, 'it is the acceptance of knowledge order that produces the authority relationship' (Zürn 2018, p. 50). In other words, states and social actors defer to the authority of our present-day international institutions on the basis of their expert knowledge and services in their respective issue areas and in recognition of their own capacity limitations in this regard.

Given the significant and ever-increasing role of digitalization and artificial intelligence, one cannot imagine a world without these new authorities in it. Neither the states nor the worldwide users of the technologies can let go of the expert services they provide, which range from common user connectivity to providing tools for ease of governing and doing business. We saw in the event of Covid19 how challenging the task of vaccination, testing, and tracking of the infected would have been if it were not for the artificial intelligence and different tracking and infection app services provided by big tech companies. Therefore, authority in our modern global society/global governance is different in nature, sources, and functionality from any previous authorities which extended or had impact across borders, regions, and continents.

Unlike traditional authority, the new authorities are reflexive in nature, which means they are neither absolute and solid (do not work exclusively with commands) nor based on any traditional sources of solid legitimacy. Rather, they are liquid, which makes them dynamic and able to move between and beyond public-private authority constellations, and their legitimacy is reflexive. States and social actors can call them into question at any time, due which these authorities on the global level are in a constant cycle of legitimation, re-legitimation, and even de-legitimation (Zürn 2017). The liquid and reflexive characteristics of authorities in global governance commit them to a constant struggle to prove their worth based on their expert knowledge and services. This addresses our broad hypothesis that:

**in different social contexts and settings, authority will appear in different ways: it will act upon different sources, create a different relationship between the rulers and the ruled, and will give shape to different and sometimes, even, to new international structural and institutional arrangements.**

A reflexive authority relationship includes enlightened and critical subordinates that recognise authorities because they acknowledge their own limitations. Thus, reflexive authority has advantages for both the authority holders and the subjects of constituencies, because authority holders enjoy legitimacy through the scrutiny, permanent monitoring, and consideration of the standards that make an authority appealing and trustworthy (Zürn 2018, p. 46).

The subordinates or constituencies (ranging from people to states) have the advantage of overcoming their own limitations by acquiring the services of these international authorities or institutions, specialised in their respective areas of claim.

Unlike traditional authority, these new authorities with liquid and reflexive characteristics are typically not internalized. In the global governance system, there are specific political authorities, in the shape of international and transnational authorities, which are recognised by direct and indirect addressees as being qualified to make competent judgements and decisions to exercise public authority justified by normative principles (Zürn 2018). Present-day authorities also show features of reflexive conception. First, in the reflexive conception, they exercise authority over state and non-state actors, including individuals. As Zürn (2018) describes them, they devise recommendations and suggestions in the hope that they will be deferred

to. States and non-state actors follow these requests seriously because they acknowledge their own limitations of capacity, expertise, and rationality. In this sense, reflexive authority relies on reflexivity on the part of those who recognise authorities based on their specialised knowledge and expertise. The reflexive characteristics of authority add a normative element of rightness to authority, which cannot be ignored by the subjects (refer to the UNSC case study below).

Secondly, today's international and transnational authorities work differently from the traditional conceptions of authority (this aspect is already discussed in the pre-modern authority section above). Unlike in earlier times, today those who defer to authority can, at their discretion, always decide on calling authority into question. Actors subject to authority can look into the repercussions of deference and can always ask for a change in the authority relationship. In this sense, reflexive authority is defined by permanent reflection by the subordinates on the value of their subordination (Zürn 2018); this means authority is not given eternally as in the traditional sense. Therefore, reflexive authority, unlike traditional authority in earlier times, is typically not internalized. It allows scrutiny of the effects of the exercise of authority (through state and societal politicization) at any time. It does not work exclusively with commands but also includes demands or requests and is embedded in sectorial knowledge.

International and transnational public authority today appears not only in the conventional form of political authority but also in the form of epistemic authorities, which mainly provide interpretations with behavioural consequences but not strictly decisions to which actors defer directly. Although authority relationships in the international context are predominantly reflexive, they can nevertheless be highly consequential and require legitimation (Zürn 2018).

The present-day authorities in global governance induce deference directly or indirectly. Institutionalised politically assigned epistemic authorities (PAEAs) like the IAEA, through monitoring and regulatory measures, not only induce deference from the addressees directly, but also bring into action the global powers on the basis of information provided. An authority relationship is termed institutionalised, when decisions and interpretations come directly from an institutionalised body, of which Governments are the typical forms (Zürn 2017).

The indirect appeal to deference is through objectivation, where the 'knowledge order that underlies the relationship becomes a dominant worldview or ideology or when the

interpretation of the epistemic international institutions has consequential capability. It is then a shared understanding reaching beyond the direct authority relationship' (Zürn 2017, p. 269). Objectivation, in other words, refers to social pressure and coercion. If states or other social actors reject information and perspectives which are considered objective and unquestionable, then the likelihood arises of social exclusion and being seen as weird. The private rating NGO, through its rating, influences consumers and changes their choices towards a product, which can be highly consequential for the producing or manufacturing company. The production company in question, therefore, is steered indirectly, without coercion or command, to take into account the recommendations and suggestions for improvement of the product to retain or regain consumers in the face of changed consumer choices based on the negative rating of a product by the rating agency.

Therefore, these new authorities with liquid and reflexive features are not necessarily inconsequential; they just employ a different functional mechanism for sustaining political order, without issuing direct rules and commands. They exercise authority, which is either objectivised or institutionalised, but cannot be backed with force. In contrast to traditional authorities, they are always dynamic and contested (Zürn 2017).

It is in light of these new and reflexive authorities that my study raises a question of how authority has shifted over time and how it is more consequential, not consequential, or different consequential in dealing with transnational issues and how can it be made more accountable.

One of my study's main hypotheses claims that there is a clear distinction between the international authority embedded in the global governance structure and the political authority in the constitutionalized political system of a state. If, during our analysis, we fail to establish such a difference between the two separate and different levels of political authorities, our hypothesis will be nullified. Therefore, the liquid authority conception of Krisch (2017) and the reflexive authority conception of Zürn (2018) combined in my study help not only in understanding new authorities but also authority in general in global governance. International political authority in a reflexive conception is loosely coupled, with non-internalized authorities lacking separation of powers, whereas authority under a constitutionalized system possesses both foundational and limitational aspects. The foundational aspect provides clear guidance on the coordination mechanism between authorities' use of force to enforce rules

and meta-authorities as to where the final authority resides, whereas the limitational aspect provides defined limits to the authority through a separation-of-powers mechanism.

The comparison with constitutionalized political authority not only initially establishes the fact of difference from solid state-based authorities, but also sets the study on a path towards analysing two major sets of research questions about international authority. First, it assesses how consequential, not consequential, or different consequential are international authority structures in dealing with transnational issues. In this regard, the current global governance of international authority structures can be analysed on a broader level, where different and multiple authorities are brought into the picture.

Second, going beyond the contractual solid command-and-obedience framework of authorities, which sometimes do not even fall neatly into the traditional two-pole public-private authority constellation, this study reframes the central questions: how has authority developed and shifted over time (in comparison with pre-modern authority structures), and what are the mechanisms through which it can be made more accountable and legitimate?

Such an approach prepares us to analyse the 'problem of international authority' on the grounds of its legitimation and functional effectiveness. Zürn refers to this 'problem of international authority' as the 'deficits of the current global governance system' (Zürn 2018, p. 43). However, either from his global governance theory perspective or specifically from my study's international authority perspective, 'the problem of international authority' means the conceptual and structural weakness of authority in global governance, caused by causal mechanisms of the multiplication of authorities in global governance. These are not subject to global governance responsibility and direct accountability and cause a power bias by 'treating like cases not alike', resulting in problems of legitimation and effective functionality. The best example of this is Facebook, a private business authority in the form of big tech company with immense public function and influence for instance, over deciding which refugees are to be shown to the world and which to be kept hidden, and what narrative with regard to any ongoing national or global issue is to be promoted or permitted on its platforms and which to be taken down.

The legitimation question has always been at the core of governance and authority. Therefore, my goal in reconstructing or posing the problem of international authority in various

social and historical contexts is to understand the patterns of recurrent political problems and to develop a causal mechanism around the legitimation problem of authority, both in the case of pre-modern authorities and in the case of new authorities in modern global governance. The objective is to explain the contemporary international authority and global governance structure under the deference model, based on normative principles and liquid and reflexive conceptions of new authorities in comparison to pre-modern authorities (discussed above).

In this way, we will successfully change the conceptual framework for studying authority and address our theoretical foundations, based on Max Weber's argument that the sources and functions of authority have shifted over time. This will involve identifying legitimation problems unique and particular to particular institutions of authority in their respective time periods. The study also considers the grounds on which the processes of legitimation and de-legitimation were or are carried out and whether these processes resulted in the strengthening or weakening of the international authority system. No doubt, the international authority and the 'global governance system of today is based on normative principles, which also form the basis of legitimation claims that are totally different from the earlier international systems or authorities' (Zürn 2018, p. 249).

### **Reflexive Authority vs Traditional Authority:**

Reflexive authority is a reason-based phenomenon of modern global society, different from traditional authority, which at its core is based on the 'unquestioning recognition by those who are asked to obey without the use of coercion or persuasion' (most likely in a contractual understanding of authority), whereas the recognition of reflexive authority does not rely on a blind and mindless or predefined interests-oriented submission.

The reflexivity in reflexive authority relationships is twofold; firstly, it is about the quality/credibility of the authority holders (which is an ongoing, changing process based on the expertise and knowledge they hold and the kind of service they provide, in line with epistemic principles of global common good and social purpose). Therefore, there is permanent monitoring and consideration of the standards and epistemic principles that make an authority acceptable and trustworthy.

Secondly, it is not a framework of pre-defined interests like that of contractual authority. In fact, it is in situations without known and pre-defined interests that reflexive authority plays

out. The authority relationship under the reflexive framework is an ongoing process, where authorities, by providing information and specific services, shape actors' behaviour and preferences. Therefore, the second source of legitimation of authority in reflexive conception comes from states' knowledge about the limitations of their own rationality in pursuing the common good. Reflexive authority in this way becomes circumstantially and socially beneficial to both the authority holders and authority receivers (Zürn 2017).

Under the reflexive conception of authority, states therefore accept the authority of international institutions when they provide expert knowledge or information and when they request the states and other social actors impartially to do something in order to achieve common goods or goals. In the present times, states, though they possess conditional sovereignty, still do not accept unquestionable commands to do things they are not comfortable doing. Rather, they have established mechanisms for reflecting upon, questioning, and even finding ways around their international obligations, while still recognizing the authority of those institutions.

Since reflexive authorities, unlike traditional authorities, are not exclusively command-oriented – they work with requests and suggestions – the addressees not only tend to monitor them closely, but also at times disagree with their perspective and suggestions, and even go to de-legitimation mode. However, this is done in such a way that the actors still accept the authority of these institutions and stay as members of them. On the other hand, they demand more inclusive, equal, and fair treatment, calling into question the IO's legitimacy. For instance, the ruling of the WTO's Dispute Settlement Body can be deferred to and taken seriously without complying with it. As another example, the EU pay fines for their GMO policy – deferring to and accepting the WTO's authority – without feeling obligated to follow its guidelines by changing their own production and agricultural policy (Zürn 2017, p. 265).

This further marks a contrast between the international authority of modern global society and the traditional form of authority, because in the reflexive conception there is no perceived duty to follow, which is at the core of traditional authority both at national and global level in the case of empires and religious regimes. However, even if states feel an obligation to follow, this obligation is rarely justified from a 'right to rule' – a notion often put forward in the case of traditional authority (as seen in the pre-modern authority section). If the states in modern global society feel obligated to follow, it is because they feel a duty towards the

international community of states in that they are supposed to contribute to the global common good (normative principles). In other words, the reflexive authority relationship differs from other conceptions of authority based on commands, right to rule, pre-defined or contracted interests and obligation to follow, which are often associated with the traditional concept of solid or contractual authority. In this context, deference to international authority is not internalized but is subject to permanent observation and question.

In contrast to the traditional and contractual understanding of authority, reflexive authority is closely associated with epistemic principles and knowledge, which provide grounds for the authority relationship and deference. According to Lake's (2010) analysis of the bilateral relationship between the US and its allies, under the reason-based understanding of international authority, 'the smaller states recognise US leadership and extend their obedience in return for protection and the provision of collective goods' (Zürn 2017, p. 267). In this context, authority claims a right to command which comes from a functionalist understanding of authority, based on pre-defined interests independent of the epistemic foundation that forms the authority relationship in contemporary times. In this arrangement, deference is lost; if authority can be understood only with reference to pre-defined interests (contractual model), then it is the result of a negotiated contract, not the authority relationship, which is accepted.

#### **4.5 Liquid and Reflexive Characteristics of Authority in Case Studies of the UN Security Council and the WHO:**

There is plenty of literature on global governance studies about the different types or classifications of actors that exercise authority on the international level. These actors might be international governmental organisations, non-governmental organisations, expert groups, or advocacy groups. The form and extent of authority they exercise depends on the kind of authority they claim or possess, based on their sources. It might be political authority, epistemic authority (based on expert knowledge), moral authority (based on moral integrity), bureaucratic authority, delegated authority, formal legal authority (contractual), or any combination of these (Sending 2017b). But these classifications, alone, cannot provide explanations of why and how some new and private actors rather than others emerge in a position of authority with immense public functions. In most analyses, authority in itself is considered an attribute of these different actors, and these attributes emerge from these actors' access to ideal-typical sources of authority.



For instance, Barnett and Finnemore (2004) on the authority of international organisations (IOs) invoke ideal-typical sources of authority – legal rational, expertise, and moral authority – by identifying attributes of IOs and linking them with these sources of authority. A kind of litmus test is applied to IOs: if any IO is rule-following, it ticks the box for legal-rational authority; if it possesses expert knowledge, it ticks the expert authority box; and if it advocates normative principles combined with social purposes, it claims to have moral authority.

This is a textbook classification of types of authority, which implies that IOs' authority may be independent of being delegated by states, but this classification is not sufficient to constitute a theory. This leaves us uncertain as to how authority is at play or not, and how some end up enjoying higher recognition and authority. For example, how did the UN Department of Peacekeeping Operations emerge with authority to manage UN peace keeping efforts, while its sister organisation, the UN Department for Economic and Social Affairs is almost nowhere to be seen in the global governance of economic matters?

Similarly, moral authority is represented by advocacy groups and NGOs on the basis of their moral integrity and standing for the public interest and common good. Yet, it is hard to explain why some of them, rather than others, are able to carve out for themselves a position of authority (Sending 2017b). Such approaches divert us from empirically analysing what the actors in question consider as being a mark or source of authority, and how these sources have changed over time. Therefore, if we want to empirically capture how authority emerges and how it is sustained and transformed over time, we need analytical concepts that focus on the relations between actors, rather than working with pre-defined frameworks or classifications of authorities. In this regard, the need is to investigate the social dynamics that are responsible for transforming or developing authorities and their relations in the light of authority's liquid and reflexive characteristics.

Sending (2017b) believes that, by focusing on the dynamics of recognition, one can better understand the dynamism or liquidity of authority, and the multiplicity of actors with the capacity of extending or withholding recognition of authority. Such an approach gives us leverage to explore two significant aspects of authority beyond contractualism. First, it allows us to analyse the degree of institutionalization of authority, not as its ideal typical source or attribute but as a process between solidity and liquidity. Second, it also provides a specific

analytical advantage in the form of an explanatory concept to study the 'social processes' of how authority, both liquid and solid, is established and developed over time (Krisch 2017).

#### **4.5.1 A Case Study of the United Nations Security Council (UNSC): An Anomaly in the Global Authority Structures**

The United Nations Security Council (UNSC), considered the most powerful international institution in global governance, appears to be an anomaly in the existing global authority structures. This is not due to the fact that it wields unprecedented authority to act on behalf of the entire international community within its areas of competence, nor is it because it is the 'only truly global organisation with a universal state membership' (Cronin and Hurd 2008, p. 16). Rather, it is because of the fact that the UNSC does not easily fit in to our conventional models of international institutions or state delegated international authorities. It acts as more than just a security regime but less than a world governing body. It simultaneously reflects both the principles of intergovernmental solid authorities and the liquid and reflexive characteristics<sup>12</sup> of new global governance authorities.

The UNSC, having adopted liquid and reflexive characteristics expands and contracts its authority proportionately with the degree of legitimacy it gains from its membership and the international community (Cronin and Hurd 2008). This indicates that even the most traditional and intergovernmental solid authorities, like UNSC, have undergone changes and therefore their legitimacy in reflexive manners is subject to constant legitimation. In this case study, I will first discuss how the UNSC's authority has expanded its reach from its original mandate or delegated authority to new goals and purposes, to exhibit the liquid characteristics of its authority. I will then shed some light on how it strengthens and sustains its legitimacy with regard to its newly acquired goals without any legal basis or changes in the UN charter. Some may think that the UNSC enjoys absolute legitimacy, derived only from the UN charter and its resolutions, but rather this is not enough since it has expanded its reach to new goals with regard to international peace and security. The basis of its legitimacy has become increasingly

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<sup>12</sup> Liquid authority refers to authority's high degree of dynamism, with actors, sites, and weights continuously shifting, making it difficult to locate, understand and control in global governance. It tends to undergo changes and acts strong in some issues and weak in others. Under the liquid conception, authority is understood in the sense that it flows, does not have a fixed shape and is difficult to explain under predefined frameworks and within the two-pole public-private authority constellation. The reflexive concept of authority (Zürn 2018) refers to authorities which are marked by a constant legitimation cycle, and which do not draw their legitimacy from traditional sources like the right to rule or any other contractual or de jure arrangements.

reflexive of its procedural correctness, deliberation with reference to its new goals and purposes, and of its performance and effectiveness. This will be discussed in detail next.

**A. *Liquid Characteristics of the UN Security Council's Authority:***

Some scholars claim that the Security Council's authority has been on the increase (Malone 2004; Cronin and Hurd 2008). Yet, there has not been enough research looking into what this means for the concept of authority and its legitimacy in global governance. Part of the reason for not looking into what it means comes from the reluctance of most scholars to conceptualize the Security Council beyond the traditional conceptions of authority, which leaves them defining it primarily under the preconceived models of IR and political science studies. In this regard, my case study contributes to the existing scholarship on the concept of authority in global governance by analysing the most visible and contested source of authority in global governance, the UN Security Council.

The UNSC is comprised of the world's most powerful and influential states and has all possible resources at its disposal to establish and implement a wide range of broadly defined policies regarding international peace and security. However, there are many goals that it fails to achieve without cooperation from less powerful states. For instance, it cannot ensure stability in an insecurity-ridden region without the active participation of less-powerful states like Pakistan and Turkey. This shows that such cooperation cannot be acquired through coercion or diplomatic shake-down. Rather, it requires a general acceptance by these states of the Security Council's authority to act. To this end, the United Nations Charter has invested a great deal of political and legal authority in the Security Council.

Although the mandate of the Security Council to maintain international peace and order has always been central to its authority goals in the UN Charter, during the cold war years this role of the Security Council was on hold. It is only recently that changes in world affairs led to the expectation that the Security Council is a rightful platform to conduct international security deliberations. This shift did not come through any change in the Security Council's structure or legal status but rather through the acceptance of the Security Council's authority by its membership and international community. Events in the world history would indicate shifts in the expansion, contraction, and relevance of the Security Council's authority. In the late 1980s, the Security Council moved to a central place in world politics. Then, in the post-

cold war period, with the end of the US-Soviet rivalry and the rise of small-scale localized wars and conflicts the Security Council gained a central position in international cooperation to resolve security issues. The improved US-Soviet relations later resulted in a more activist Security Council, where it expanded its authority along two dimensions (Cronin and Hurd 2008, p. 13). (Refer to the figure below)

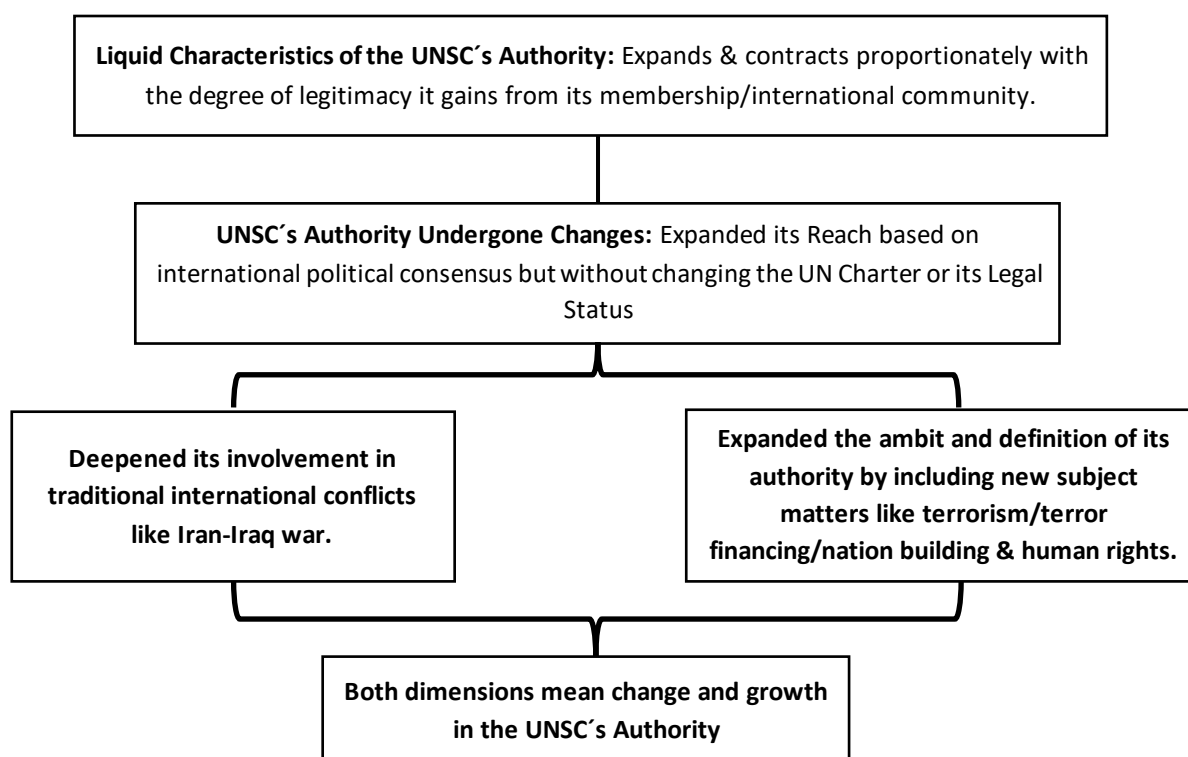


Figure 12: Liquid Characteristics of the UN Security Council's Authority

It deepened its involvement in traditional international security problems by intervening more actively and forcefully in interstate wars, as in the Iran-Iraq war of 1988. It also expanded its reach by including new security-, peace-, and stability-related issues to the definition and scope of its traditional mandate of dealing with the 'threat to international peace and security' (Cronin and Hurd 2008, p. 14). It is as a result of this expansion that terrorism, terror financing, human rights, the status of girls in domestic society, individual criminal behaviour, and nation-building came under the purview of the Security Council's authority.

Expansion by both intensifying its involvement in traditional international conflicts and extending its remit to include terrorism, human rights and other issues translated into a growth of Security Council's authority. Does an increase in the Security Council's authority scope mean an increase in its authority too? Here, the case study is set to argue that the Security

Council's authority, which might be considered the most solid in global governance, also has liquid and reflexive characteristics. Furthermore, it contributes to my study's larger goal, which is to develop an understanding of the concept of authority in global governance. Therefore, on the question above, I position my study to argue that the authority of the Security Council is dependent on its wider acceptance and recognition by states and the international community as having the right and competence to make binding decisions regarding international security, stability, and justice.

The liquid characteristic of authority shows that an authority will act strong in some areas (engage actively and even expand its scope of authority) and weak in others (not act and even contract its authority), and this is seen in the Security Council's authority, because there have been areas of contraction in the Security Council's authority, like mutual disarmament among states. Articles 26 and 47 of the Charter provide that the Security Council should play the lead role in seeing through mutual disarmament among states and establish a collective military with a command structure and proper military units (Cronin and Hurd 2008, p. 14). However, none of these were realized in the post-World War II period and during the cold war period the great powers continually denied the Security Council the right and authority over this area. Despite the clear mention of these authorities in the UN Charter, it remains controversial to this day whether the Security Council might have the legal authority to attend to either disarmament or establishing a collective military force. Although a few states have worked towards the legal provision of the Security Council military force, yet none seem willing to go with the right of the Security Council to take the lead on global disarmament.

#### A1. UNSC's Delegated Authority under the UN Charter:

According to principal-agent theories, a set of states delegate a specific task to an agent (an international organisation like the UNSC) with the expectation that the IO will perform the assigned task diligently and efficiently on their behalf. It is usually in the interest of states to grant the IO some amount of leverage in how it executes the assigned task (Hawkins 2006), but this puts the states in a conundrum; on one hand, they do want the IO to execute the task in a way that fulfils their objectives and interests, but on the other hand, curtailing or controlling the IO's discretion in executing the task could prove to be counterproductive to the advantages of delegating authority. In this vein, the authority delegated to the UNSC by the UN membership is formidable. All the 191 member states, by ratifying the UN Charter, delegate

to the Security Council's 5 permanent members and 10 non-permanent members the authority to make binding decisions with regard to threats to international peace and security. These binding decisions may include economic sanctions and military interventions.

The UNSC is different from any of the IOs analysed under principal-agent theories. Unlike the WHO (discussed next), which thrives on expert informational advantage in a specific issue area, the UNSC is delegated authority in the very first place for a decision-making role. It is based on this understanding that states have delegated some discretion to the Security Council in deciding upon two very critical issues. First, the UNSC has discretion in deciding on the amount of collective action and the types of responses that should be produced in response to perceived threats to international peace and security (production of public good). Second, it has discretion in evaluating and deciding whether particular uses of force are appropriate (Voeten 2008). Delegation is the only source of the Security Council's authority, as in the context of delegation, authority is defined as 'the right to pick a decision in an allowed set of decisions' (Herbert A. Simon 1947 cited in Voeten 2008, p. 44).

With regard to delegated authority under the Charter, consent theorists argue that states are only obligated to follow those rules that are categorically and voluntarily consented to by ratifying a treaty or adhering to customary practice (Cronin and Hurd 2008). In contemporary international law theory, treaties like the UN Charter are the primary source of legal obligation since they represent the most explicit manifestation of state consent. Treaties are legally binding; however, all parties can opt out by following the proper procedure for withdrawal from a treaty. This is because the consent theorists believe that treaties are not like legislation and therefore cannot act as a source of universal law. Part of this argument is supported by the state sovereignty principle, which is that states are free from acknowledging any higher authority. Therefore, the interpretation and implementation of international law is often determined by each state individually (Cronin and Hurd 2008, p. 60). From this perspective international organisations cannot create new independent sources of authority. They cannot legislate for the international community and their decision-making bodies cannot act beyond the specific authorities delegated to them under their charters, which are voluntarily signed by the members.

For political scientists, the authority of any international organisation is simply that which states delegate to them for the purpose of coordinating their actions and pursuing their

interests. When any international organisation no longer caters to these expectations or goes beyond them, such authority can be withdrawn. In this sense, the charters act as legal contracts among the member states. In such a contractual sense, by signing the UN Charter, the members have delegated specific authority to the Security Council and have consented to abide by the rules of the Security Council in areas of international peace and security. The scope of this delegated authority is limited to those provisions specifically defined in Chapters VI and VII of the UN Charter. Any changes to the scope of its defined authority must be formally approved and consented to by the membership (Cronin and Hurd 2008).

#### A2. International Consensus and the Changing Authority of the UN Security Council:

The authority exercised by the UN Security Council towards international peace and security is derived from the UN Charter, a document that enjoys the legal status of a multilateral treaty. Under international law, states are obligated to obey the decisions of the Security Council because they have consented to its authority by signing the Charter. Therefore, legally speaking, any changes in the scope of its authority must also emanate from explicit state consent. But this is not the case when it comes to the growth of the Security Council's authority. Rather, since the 1990s the Security Council's most effective actions and interventions have occurred in areas which go beyond the scope granted to it either by the UN Charter or by some means of consent. Instances of this include nation-building tasks (Bosnia, Afghanistan, Somalia, East Timor); prosecuting war crimes (former Yugoslavia); peacekeeping (57 operations since 1960); dismantling apartheid (South Africa); attending to serious humanitarian crises (Rwanda, Barundi, East Timor); resolving civil wars (Liberia and Angola) and restoring democratically elected government (Haiti) (Cronin and Hurd 2008, p. 57).

This expansion of the UN Security Council's mandate did not involve any legal changes in the scope of the Security Council's authority. No amendments to the UN Charter, no new treaties were ever introduced in this regard; never was it even debated in the UN General Assembly and nor was it imposed on the Security Council by its permanent members. Rather, a change in the scope of the UN Security Council evolved through international political consensus (Cronin and Hurd 2008). Although there may have been some objections to the wisdom of some actions, no state has filed a formal protest over the legality of this expansion. Some scholars, inspired by realist and institutionalist schools of thought, think that this is because of global politics and the desire to be 'part of the parade' (Schia 2013, p. 140).

This is a very interesting point with regard to consensual or contractual authority, because if members of the UN, which now includes all the countries in the world, are legally required to follow the Security Council's expanded mandate or its expanded authority without explicit approval from them, this raises questions concerning the consensual and contractual foundations of authority. As the main decision-making body of the world's only universal-membership organisation, the Security Council has gained the authority to interpret and implement consensus-based international law. In this vein, as long as the Security Council exercises its authority on the basis of generally accepted legal norms, the expansion of its legal authority is likewise accepted as legitimate, even though there might not be a formal process of achieving state consent (Cronin and Hurd 2008, p. 58).

The political scientists (Cronin and Hurd 2008; Hawkins 2006) who are sceptical of taking too strong a legal stand on the expansion of the Security Council's authority believe that the framers of the UN Charter did not want to subject the Security Council to international law so as to avoid entangling the body in legalism when making decisions regarding international security. That is why the founding states established the Security Council more as a political institution comprised of ambassadors representing their respective heads of state. But again, in practice, in almost all events, when the Security Council has acted, the five permanent members (P5) have made serious efforts at legitimizing their actions under the framework of international law and the UN Charter (Hawkins 2006). For this reason, all Security Council resolutions cite specific charter provisions and provide legal arguments from international law to provide justification for their behaviour. In fact, sometimes the P5 can be very cautious of legalities in dealing with issues of peace and security. The best example is NATO's war against Serbia in 1999, when France refused to support a blockade of Serbia, questioning whether there was a basis under international law to stop and search ships without a new resolution from the Security Council (Cronin and Hurd 2008, p. 59). All this suggests that the Security Council is both a political as well as a legal organisation.

However, the question that still remains unanswered is, if the expansion of the Security Council's authority was never consented to by the members, then how is it that the Security Council has been able to broaden its legal authority to include in its scope nation-building, war crimes prosecution, safe zones, and humanitarian interventions? As the world's only truly universal-membership organisation (with 100% of all states as members), the UN can claim



to represent the collective will of the international community. Since the UN Charter is also legally binding on all members, which means all states, the line between an organisational mandate and a general principle of international law is blurred (Cronin and Hurd 2008, p. 60). The Security Council, as the primary decision-making body of the UN, at least in terms of the maintenance of peace and security, it wields significant legal authority to decide when a violation of international law has occurred, even though it is not empowered to either interpret or enforce international law beyond the issue areas that are stated in the UN Charter. It is in this sense that the Security Council is one of the very few international authorities whose decisions are legally binding under international law.

According to consent-based theories, the Security Council can expand its authority in one of three ways: amending the UN Charter, reinterpreting the Security Council's Chapter VI and VII provisions regarding the UNSC's mandate, or invoking customary international law (Hawkins 2006; Malone 2004; Cronin and Hurd 2008). Since the UN has not expanded the scope of the Security Council's authority through the legal amendment process, then it must be the latter two approaches of reinterpretation and invoking customary international law. The reinterpretation of the Security Council's authority in Chapters VI and VII is done partly by broadening the definitions of the three key terms authorising the Security Council in Article 39; 'breach of the peace,' 'threat to peace,' and 'act of aggression' (Cronin and Hurd 2008, p. 62). This is done first by developing a new and broader understanding of what these terms mean in the face of existing international issues; second, by re-examining the 'original intent' of the Charter's framers; third, reinterpreting the specific nodes of its authority within the context of the UN's overall goals. By employing just, the first and second tools, a new authority within the original document is discovered. However, this expansion is undertaken carefully, so as not to establish precedents for similar actions in a future situation.

A political scientist could argue that the Security Council establishes and even expands its authority through its practices, rather than through a textual interpretation of the UN Charter. From this view, it is the Security Council itself that decides the scope of its authority and can always reinterpret the text of the Charter when necessary (Cronin and Hurd 2008).

The other tool for expansion of the Security Council's authority is to invoke customary international law. This reflects 'implied consent' since it is derived from actual state practices which have been consistently sustained and accepted as legal obligations by a wide range of

states (Cronin and Hurd 2008, p. 62). A particular practice can turn into a legal obligation; for instance, the right of free passage on the high seas. It has long been accepted as part of international law, mainly because states have followed and respected this practice over a long period of time, and a wide range of regime types like monarchies, empires, democracies, etc., have acknowledged its legality.

Finally, the political consensus and consensus-based international law also serve as the major sources of the Security Council's authority expansion. The growth in the Security Council also reflects new developments in international law which, under certain circumstances, allow for collective international consensus to override individual state consent. In this sense, the Security Council has also acted as an authority on defining what constitutes a legal consensus and this has enabled it to expand its mandate to adapt to collective international consensus. A theory of consensus-based law provides that, under specific conditions, some international legal obligations can be derived from a widespread agreement or willingness among the members of the international community (Cronin and Hurd 2008, p. 64).

The primary mission of the Security Council is to maintain international security and ensure the prevention of interstate aggression. But since the end of the cold war, the Council has focused as much on containing state violence as it has on state aggression. However, the Security Council was never designed to control violence, but rather threats to the territory and sovereignty of its member states. In fact, the Security Council's engagement in curbing violence has not even been primarily with its effect on territory, sovereignty, or state security, but rather with the well-being of civilian populations in insecurity-ridden regions like Somalia, the former Yugoslavia, Sierra Leone and East Timor (Cronin and Hurd 2008).

Changes in the forms of warfare, as well as in the modes of threat to global peace and security must have stretched the limits of the Security Council's authority. Over the past few decades, ethnic conflicts, civil wars, sectarian discord, and other forms of internal violence have increased and large-scale interstate wars have decreased. This shifted the sources of global instability from interstate wars and rivalries to lower-level internal conflicts. These lower-level internal conflicts, which involve the use of extreme violence, could generate massive refugee flows, illegal arms trafficking, and the rise of guerrilla-style militias or terrorist groups, all of which could disrupt regional, and eventually global, stability and peace.

Whatever the reason for the expansion of the Security Council's authority, one thing that is evident is that its authority is liquid and has changed over time. Sticking to contractual solid authority models would not let a researcher fully explore the actual authority of the Security Council. This does not mean that the level of violence against civilians warrants the change in the scope of the UN Security Council's authority, but rather it is the basis of widespread belief concerning the basis upon which the Security Council can legitimately consider such practices to fall within the Chapter VII provisions (Cronin and Hurd 2008, p. 72).

Even during the cold war, consensus had been gradually developing in the international community that some forms of extreme state violence were *prima facie* violations of international law. The two most important developments in this regard were the Genocide Convention and the introduction of a new type of international offence – crime against humanity – first applied at the Nuremberg trials. The genocide convention declared that a particular action would be an international crime, not simply a treaty violation (ICRC 2022). Building on these precedents and resolutions passed by the UN General Assembly, the Security Council considers these acts to be international crimes, regardless of whether particular states have agreed to ban them or if they are parties to any particular treaty.

Therefore, by the end of cold war, the Security Council already had the legal tools at its disposal to act beyond the boundaries of collective security. This aspect is evident from the Security Council's handling of the conflicts in the former Yugoslavia during the 1990s. In dealing with these events, it established two practices which represent the liquid characteristics of its authority. First, the Security Council assumed legal authority by creating war crimes tribunals to try those individuals found responsible for violations of international humanitarian law. Second, it designated sovereign territory as 'safe zones' designed to protect civilian populations in conflict situations without the consent of the warring parties (Cronin and Hurd 2008, p. 73). It required all the states to actively cooperate in arresting and extraditing suspects, even if it meant changing domestic laws to enable governments to do so. The states did not have the option of opting out of it or choosing not to abide by its provisions and were liable to coercive sanctions if they did not cooperate.

The Security Council tried to provide a legal basis for moving beyond its mandate. Although the Security Council referred to Chapter VII in Resolution 827, it was not acting in response to a breach or a threat to peace or act of aggression. Rather, it claimed to be responding to

violations of 'international humanitarian law,' a phrase that is used throughout the resolution but does not appear in any treaty or organisational charter.

This raises two critical points. First, the Security Council is in no way empowered to enforce the Geneva Conventions or any other treaty that is negotiated outside the framework of the UN. Second, the term 'international humanitarian law' is not a legal term. Rather, it is a term that refers to a set of legal norms drawn from a wide range of treaties, conventions, and protocols which have been concluded to protect civilians and minimise human suffering by regulating the means and methods of warfare (Cronin and Hurd 2008, p. 74).

Interestingly, the Security Council also does not claim to be enforcing any particular treaty or legal instrument. In fact, nowhere in the resolution on authorising the creation of tribunals did the Security Council mention any specific treaty violations. A general consensus had been slowly developing by the end of World War II that the international community was onboard in developing legal restrictions on state violence, when it reached huge and unthinkable levels of mass violations that shocked the conscience of humankind. It was on this basis that the tribunal was created by the Security Council.

The Nuremberg Trials serve as an example in the discourse surrounding the creation of international criminal tribunals during the 1990s, only because the normative context was favourable to such interpretation. The international community was thus ready to accept some mechanism for imposing accountability on perpetrators. It was in this vein that the Security Council during the former Yugoslavian war declared specific territory to be UN-protected safe zones by declaring ethnic cleansing to be an illegal practice under Resolution 819, although it did not provide any particular treaty or agreement references to back this up. Even a very generous interpretation of Chapter VII would be a far-fetched attempt to find a legal foundation for such an act within a traditional consent-based international legal system (Cronin and Hurd 2008, p. 75).

None of this is to imply that the Security Council did not have the legal grounds to perform these actions. Rather, my point here is that it was expanding its authority and drawing justification from international political consensus, and this reflects that the Security Council's authority also includes liquid characteristics, which cannot be captured by sticking to traditional contractual, solid state-delegated authority under treaties and charters. Furthermore,

the Security Council's increased role and its act of issuing such mandatory declarations is not evidence of its increased authority. But, rather, the acceptance by most member states of the Security Council's right to create new obligations is a sign of its increased and liquid authority, because the Security Council created these obligations without relying on coercion, making them a legal requirement rather than a dictate from the world's most powerful states.

In short, to sum up my discussion of the liquid characteristics of the UN Security Council's expanded authority, I would say it has evolved from a body charged with looking after international collective security to one that exercises authority across wide range of practices which go well beyond the issue of international peace and security.

#### **B. Reflexive Characteristics of the UN Security Council's Legitimacy:**

As argued above, the authority of the UN Security Council is both liquid and reflexive. Here, I discuss how its authority is reflexive with reference to legitimacy dependent on procedural, purposive, and performance indicators. It is on these grounds, I argued in the beginning, that its authority expands and contracts proportionately with the degree of legitimacy it gains from its procedural, purposive, and performance reality. No authority can be understood without looking at its grounds of legitimation. Underlying the liquid aspect of the Security Council's authority lies the legitimacy question; that is, the degree to which the UN membership recognises the Security Council as having both the right and competence to act on behalf of the international community with regard to international peace and security.

Legitimacy is grounded in shared beliefs and recognition of the appropriateness and capabilities of an organisation or actor. This raises a question of whether states consider the Security Council to be the proper body to address the wide range of peace- and security-related issues. This aspect brings me closer to my study's argument that the legitimacy of authorities in global governance is reflexive – subject to a constant cycle of legitimation, de-legitimation, and re-legitimation (Zürn 2018).

In the reflexive sense, authorities have to constantly gain and regain their legitimacy based on their legitimacy indicators and the rising competition in global governance; over the past half a century, a multitude of regional as well as global organisations have emerged, which, regardless of their identity as being public or private, exercise international public authority (Bogdandy et al. 2008). In this context, states have a variety of forums to choose from to best

address complex transnational issues. Under international law, there is no hierarchy of institutions in global governance; each institution has theoretically equal status in relation to its members and they all, one way or other in their different capacities, exercise public authority.

However, if there is something that makes a difference among them, it is their legitimacy, in which case their ability to maintain their position as relevant, the most appropriate and capable, depends on the 'perpetuation of their legitimacy' (Cronin and Hurd 2008, p. 206). Even the most traditional, solid, and legal authority, like the UN Security Council, which seemingly derives its legitimacy from a contractual perspective from the UN Charter under which authority is delegated to it. Yet, on empirical grounds, it has to gain and regain legitimacy for establishing, building, maintaining, and expanding its authority.

Legitimation is possible when an authority is identified with purposes and goals that are consistent with the broader norms, values, and expectations of its society. Some agreement between authority and social values is necessary for legitimation (Zürn 2018). When such an arrangement exists, there are at least three mechanisms by which the behaviour and practices of an organisation might contribute to its legitimation (or de-legitimation). These are deliberation, proceduralism, and effectiveness (refer to Figure 12 below).

The UN Security Council's authority, like any other new authority with no legal basis, maintains and expands its authority on its procedural, purposive, and performance legitimacy. Procedural legitimacy depends on how much an institution is consistent with its existing rules and decision-making procedures. Its legitimacy in this sense is, in part, a function of it following the internal procedures of the UN itself. As long as it sticks to these rules and procedures, it can maintain its authority and even expand it into new areas without violating its trust.

However, the known criticism against the Security Council's decision-making is that decisions are primarily made by the P5, which weakens its legitimacy indicator. In this regard, Johnstone argued that legitimacy in the Security Council does not require democracy in making its decisions but rather transparency, correct procedure, and inclusion during the deliberative process (Johnstone 2003). According to the proceduralist view of legitimation, the procedures an organisation follows need not be necessarily fair or just all the time in themselves, but they must be applied fairly and consistently for maximum legitimation effect. Procedural correctness here refers to fairly following the known rules, not to fair procedures as such. For the

Security Council this means abiding by the procedures set out in the Charter and in the *Provisional Rules of Procedure of the Council* (Cronin and Hurd 2008, p. 9). It is these aspects that have enabled the Security Council to expand its authority into new areas without sparking a revolt from the membership (Cronin and Hurd 2008).

Deliberation and procedural correctness are not sufficient for gaining and sustaining legitimacy. If they were, then the most legitimate institutions would be those with the most deliberation and most sincere and transparent proceduralism, and this is certainly not the case. For instance, the International Labour Organisation has well laid-out procedures of deliberation when considering new international standards for work, yet this does not translate into high legitimacy for its conventions. Likewise, the deliberations of the UN General Assembly do not produce legitimacy for its resolutions (Cronin and Hurd 2008). This has to be supplemented with the third aspect of legitimacy, called performance legitimation (refer to the figure below).

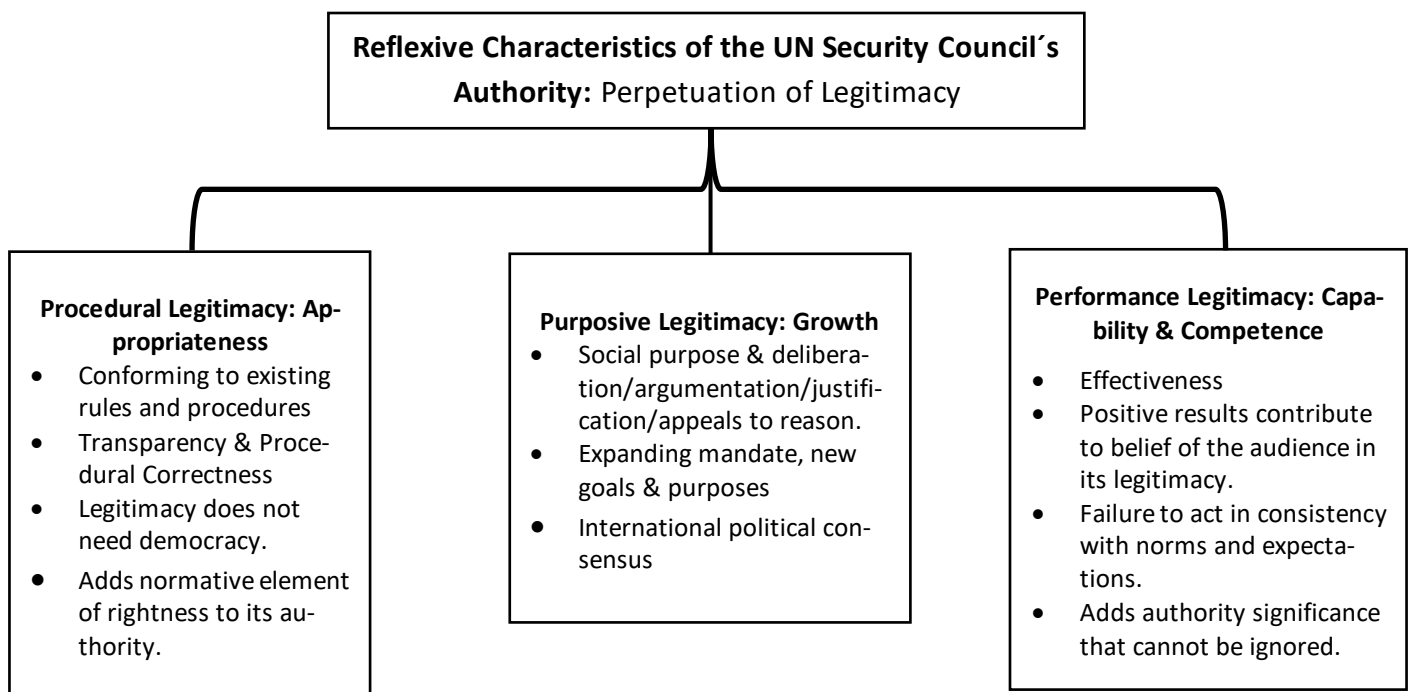


Figure 13: Reflexive Characteristics of the UN Security Council's Authority

The Security Council's purposive legitimacy has enabled its authority to take action in areas that go well beyond its mandate. It suggests that the growth and expansion of the Security Council's authority is legitimate as long as it is seen as consistent with the broader norms and values of international society. It is due to this aspect that the Security Council was able to

expand the scope and definition of its authority into new areas without either the explicit consent of the membership or amendments to the UN Charter, because its actions were in line with the goals and purposes that were generally accepted by the international community. For instance, since there was a broad and normative consensus that international law prohibits the exercise of 'excessive violence' by the state, the Security Council legitimately and rightly challenged such practices and this was accepted by the membership even though it required an expansion of its legal and political authority within the UN (Cronin and Hurd 2008, p. 207).

Lastly, performance legitimacy directly exhibits the reflexive aspect of the Security Council's authority, because the Security Council's authority can diminish if it fails to act consistently with the norms and expectations of the membership. Decisions that fail to contribute to the expected goals will speed the loss of legitimacy, meaning its authority becomes de-legitimized. If it fails to perform on the delegated tasks of addressing threats or breaches of the peace, its legitimacy is reduced. To regain it, it has to exhibit effectiveness in achieving social purposes. This does not imply that the organisation's goals must be seen as legitimate and normatively right; the social purpose of the organisation may itself contribute to its legitimacy. For instance, the members of the UN accept the right of the Security Council to make binding decisions for the larger community because, at least in part, they also accept and recognise its social mission as legitimate. Therefore, as long as it represents the broadly accepted norms and principles of the UN Charter and meaningfully serves a valuable social purpose, the members will accord it a measure of legitimacy.

This gives the Security Council some wiggle room to reinterpret and expand its mission without facing a backlash of de-legitimation. The best example is the Rwanda debacle, the failure of which made the UN officials worried about a poorly executed enforcement mission there. They feared that it would harm the legitimacy of the whole organisation. From their perspective, the UN's legitimacy and the maintenance of its authority were directly dependent on how it performed on peace and security issues (Cronin and Hurd 2008).

In sum, the combination of deliberation, proper procedure, and effectiveness can together contribute to the legitimation of an organisation. However, Ruggie (1982) finds that the relationship between these three legitimacy factors is complex and it is rare to find all three working precisely in the same direction. Authority needs legitimacy and it is therefore a product of



the shared beliefs about the appropriateness of the organisation's proceduralism, mission and capabilities. Its authority is therefore derived indirectly from the treaty that formally, but broadly, specifies its legal authority. It is for this reason that my study argues for a broader and beyond-contractual understanding of authority in global governance, because, for instance, the authority of the Security Council is only partly knowable from a legal and contractual understanding by examining the Charter. After all, as discussed above, its authority may change without an amendment in the Charter.

Likewise, the formal authority of the Council as per the Charter remains the same, but it has expanded because of the multiplicity of actors involved and the changes in the relations between actors. The ability to pass resolutions mandating peace operations and interventions for promoting liberal democracy and human rights over the past two decades arises from the transformation of the geopolitical landscape and the actors at play, like the Soviet Union and most currently China. 'Groups of friends' are more often used for de facto crisis management (as in the case of war-on-terror alliances; Pak-US alliance), and the Security Council serves as a legitimating body for activities performed by states under the guidance of the Secretary General. The non-permanent members of such groups gladly provide their services, sometimes at huge personal cost (like the casualties and domestic backlash in the case of the war on terror in Pakistan), for the sake of recognition for their contribution to the system or, to put it more realistically, to get a part in the 'parade' (Sending 2017b, p. 324).

Although the authority of the UNSC is solid, we need analytical tools that come more from liquid, relational and broader conceptions of authority. We need analytical tools that go beyond the formal-legal and contractual frames to understand the founding of such an authority, which has a history of growth and expansion in scope beyond what is formally and legally delegated. The reason for doing so is that authority refers to relationships between actors, and no matter how institutionalised and solid authority is, its solidity still relies on the stability of the relationship between actors, which is subject to change. This change is accounted for in a variety of ways. Sending (2017b) rightly focuses on the liquidity and dynamics of recognition to capture how authority is stabilized, expanded, and transformed, and treats authority as the outcome of social processes, where actors seek recognition from one another. Here, the seeking of recognition is central to both the establishment and possible transformation of authority (Sending 2017b).

Despite the different forms that an authority may take across different areas of concern (security, health, environment, and human rights etc.), there is a continuous struggle for authority, which refers to relations between actors that engage in global governance. Therefore, a broader approach beyond the contractual model, which focuses on the liquid and reflexive characteristics of authority, provides us the analytical tools with which to explore how authority may vary on a scale from solid to liquid and from firmly institutionalised to continuously contested (in reflexive ways).

This case study has discussed how the grounds of authority of the Security Council are liquid and reflexive and how these are contested and problematic.

#### **4.5.2 A Case Study of the World Health Organisation (WHO):**

Focusing on the liquidity and reflexivity of authority beyond the contractual model and other frameworks (e.g., formal-legal and formal-delegated authorities) allows us to understand authority in global governance on a relational level in real social spaces, subject to change, expansion and contraction, and challenges in sustaining itself. For this aspect, it is useful for my study to also briefly look at how the WHO's authority exhibits liquid and reflexive characteristics in line with the COVID-19 pandemic crisis. Authority in global health governance, with reference to the WHO, has mainly shifted on three levels:

1. The WHO's authority versus the interests of the great powers (like the US) and the multiple actors competing for authority to shape global health governance:

The WHO, under its constitution, has the legal authority to direct and coordinate global health affairs. It was an unchallenged global authority on health from its founding in 1948 until the 1980s. From 1980 onwards, the WHO's position as the international authority on health has often been challenged and subject to criticism and de-legitimation.

The first such event was the formulation of the 'Declaration of Primary Healthcare' from Alma-Ata in 1978 (Sending 2017b, p. 319). This development was viewed with scepticism by the US and a range of US-dominated IOs, because it emphasised the 'intersectional' approach to health, making socio-economic development instrumental to global health considerations. In its response the following year, in a conference at the Rockefeller Foundation Italy, in which the World Bank, USAID, and UNICEF also took part, the US presented an alternative to the

WHO's Alma-Ata declaration, which focused on cost-effective and targeted interventions to improve health.

UNICEF launched numerous projects in operationalizing this alternative. The World Bank also, in 1970, started to give out loans earmarked for health investment and even established a separate Population, Health, and Nutrition Department. Both UNICEF and the World Bank, in this way, entered in the field of health by putting forth sets of policies (guarding the interests of big powers) and making economic considerations central to health policy.

By doing so, they not only got to play the game, but they also changed the game by undermining the public-health-grounded evaluative criteria that formed the basis of the WHO's authority from its creation. This weakened the WHO's authority, since both states and other IOs no longer recognised or deferred to the WHO as the sole authority on health issues. Zürn (2018) refers to this as 'counter-institutionalization', resulting in the multiplication of actors, each with distinct claims to authority, and the fragmentation of global governance.

## 2. The WHO's Re-legitimation Process:

With multiple authorities in global governance, IOs continuously struggle for positions of authority. This transformation in the nature of international authority makes authorities in global governance more liquid and reflexive, subject to constant legitimation and recognition. The WHO, following the principles of reflexivity, established a Commission on Macro-economics and health in the 1990s, which emphasized that investment in health was crucial for economic growth. In this way, the WHO repositioned itself but no longer as the single solid global authority on health. It has come to terms with the fact that the authority structure in global governance is liquid and highly reflexive, and that IOs are consequently engaged in a constant struggle for recognition and legitimacy.

## 3. The WHO's De-legitimation Process in the case of COVID-19:

Since the outbreak of the pandemic, the WHO has been under the COVID-19 storm and the target of criticism. Both the pandemic and the controversies around the role of the WHO have created crises for the organisation. However, the politicization of the outbreak and the debate over how to repair global health governance will shape the future of the WHO. The WHO is criticized for failing to exercise global leadership and, instead, becoming a tool of Chinese politics, power, and propaganda (Fidler 10/4/2020). Critics argue that the WHO had the ability

to question China's handling of the outbreak in Wuhan, so that it could prepare the world for it, but the WHO failed to act. In this regard, questions are now being raised about the WHO's authority in handling serious outbreaks for the good of global health.

International Health Regulations (IHR) mainly rely on the WHO's technocratic narrative of legitimization, where the WHO uses its scientific, medical, and public capabilities to help countries prevent, protect against, and respond to outbreaks of disease. Exercising authority on such technocratic grounds usually does not produce politicization, because the focus is on dealing with outbreaks with policies based on science, medicine, and public health, rather than on the whims or interests of any state. Such an epistemic exercise of authority based on expert knowledge in the global health governance also appears in the wake of COVID-19.

*Table 4: The WHO's Authority*

<b>Authority of the World Health Organization to Take Action</b>	
International Health Regulations grant the ability to challenge how governments exercise sovereignty	
<b>Under IHR the World Health Organization Can</b>	
<b>COLLECT</b>	Disease-event information and verify it and share it
<b>DECLARE</b>	A public health emergency of international concern
<b>REINFORCE</b>	Requirement for trade/travel measure justification
<b>MONITOR</b>	Human rights outcomes of disease-control measures

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On formal-legal grounds under the IHR regulations, the WHO exercises authority on four levels. First, the WHO is authorised to collect disease event information from non-governmental sources, seek verification from governments about it, and if necessary, share it with other states. Second, the WHO is authorised to declare a public health emergency of international concern, even if the state experiencing the outbreak resists. Third, the WHO has the power to reinforce the requirement that a state should provide the scientific and public health justification for trade or travel restrictions that do not comply with the WHO's recommendations or accepted disease control measures. Fourth, the WHO obligates states to protect human rights when managing disease outbreaks.

The criticism of the WHO during the COVID-19 pandemic exactly follows the lines of these four authorities. First, criticism that the WHO turned a blind eye to China's attempt at

covering up the outbreak suggests that the WHO failed to act on information provided by other sources. Second, the WHO is criticized over its authority to declare an outbreak, with critics claiming that it declared the COVID-19 outbreak a public health emergency of international concern at a time and in a manner that was indecisive and deferential to the Chinese government. Third, the abrupt travel restrictions imposed by countries in the wake of the outbreak, violating international health regulations, were not probed by the WHO. Fourth, the WHO is criticized for its silence over human rights violations caused by harsh government responses like mandatory quarantine, isolation, and forceful lockdowns.

The WHO is noted to have a different functional track record in different disease-events, including the rise of the WHO's authority and leadership to significance and importance during the SARS pandemic in 2003 and H1N1 influenza pandemic in 2009, but its catastrophic failure during the Ebola outbreak in West Africa in 2014, its revived success in the Ebola outbreak in the Democratic Republic of Congo in 2018, and lastly its highly criticized role in the current COVID-19 outbreak. To understand the dynamic authority relations resulting from these events, it is not enough to look at the WHO's formal-legal authority functions, based mainly on technocratic principles. In this regard, before the outbreak of COVID-19, 'the WHO was expected for global health reasons to exhibit leadership through the use of its functional capabilities rather than by exercising the authority it had to challenge governments politically' (Fidler 10/4/2020). This approach put the WHO in a dilemma over COVID-19 because the disease broke out in a social and political context that was already hyper-politicized.

The WHO's non-confrontational, politically assigned epistemic authority in the face of China's intolerance of domestic dissent and foreign criticism overwhelmed the WHO's desire to avoid politics in working with China in the interest of global health, leaving the organisation vulnerable to criticism of its dealings with China. Other countries – especially the USA – also applied a political lens to the outbreak, by blaming it on the Chinese leadership and blaming the WHO for giving in to Chinese deception and propaganda. Therefore, the absence of convergence between U.S. interests and the WHO's actions left the WHO exposed to attacks which intensified as the U.S. itself struggled with COVID-19 at home.

In the wake of SARS, the WHO was given unprecedented authority vis-à-vis state sovereignty by the WHO member states and its scientific, medical, and public health capacities were expanded. In other words, the WHO was empowered to challenge sovereignty in the interest of

protecting global health; however, today, in the COVID-19 pandemic, the world's most powerful countries are demanding that the WHO follow their respective sovereign interests for reasons that have little to do with global health.

The WHO finds itself in this predicament despite, over the last decade, defining its leadership in global health more through its scientific, medical, and public health capabilities than its authority to challenge states politically under the IHR. In this context, COVID-19 has not changed the world so much as clarified how much the world and the authority structures in global governance have changed (Fidler 10/4/2020). Therefore, it would be a very simplistic and often misleading analysis of any authority in global governance to look only at its contractual and legal frameworks. Including liquid and reflexive authority characteristics in the matrix provides a much clearer and more relevant picture of authority in global governance.

In this vein, the dynamism and liquidity of authority structures in the global health regime is thus the result of not just the changing terms of recognition and legitimation but also the global politics of great power competition (especially, the manner in which China and the United States politicized COVID-19 for geopolitical purposes). Actors outside the field of health governance have continuously subjected the WHO to legitimation, de-legitimation, and re-legitimation processes and even tried to use it to further their interests at the cost of the global common good. They do this by creating new legitimacy narratives, or reflexive criteria like making economic efficiency crucial to global health, going for targeted interventions and through counter institutionalization (Sending 2017b).

Therefore, these factors of dynamic authority relations with its changing forms, sources of legitimation, and changing of functions could hardly be captured if we focused on the formal-legal basis of the WHO's authority or the authority delegation act that established the organisation. A realistic understanding of authority and its problems comes to light best through the change of conceptual framework of authority which analyses authority beyond contractual and solid frameworks on the grounds of the deferential model, more on liquid, reflexive, and dynamic grounds in consideration of authority relationships and social processes.

#### **4.6 Implications of the New Authorities in Global Governance: Challenges for the Analysis of Authority Structures and Questions of Legitimation:**

Despite the significance and centrality of legitimacy in global governance, its workings remain poorly understood. Thus, the poor understanding of legitimacy, I believe, directly leads to a narrow understanding of authority in global governance, and a narrow understanding of authority, its functions, and behavioural consequences, in turn, results in a shortfall of global governance, which human society cannot afford in the face of ongoing global challenges. Consider climate change, epidemics of disease, financial markets, military security, trade flows and human rights; they all manifest global challenges. A shortfall of global governance would just result in uncoordinated climate policies, uncontained epidemics turning into pandemics, recurrent financial crises, arms proliferation, trade protectionism, and human rights abuses. International authorities or global governance institutions – such as the UN, the World Bank, and the WHO or other informal, non-institutionalised state authorities like the G20, and non-state private authorities like Amnesty International – are therefore instrumental for the global common good or the preservation of collective welfare. These global governance institutes are more likely to function smoothly and effectively if they enjoy legitimacy. Tallberg et al. (2018, p. 2), rightly pointed out that, ‘when audiences view a governance arrangement as legitimate and they have confidence in its rule then they are more likely to endorse and accept its exercise of authority’. Without legitimacy, authority is weak and not respected, or it resorts to coercion, use of force, trickery, and secrecy to sustain its influence.

The question comes down to whether a normative or sociological approach to analysing authority and legitimation provides a broader understanding of the global governance landscape. The normative legitimacy of authority refers to authority’s right to rule based on its conformity to certain philosophical values and principles, like democracy, fairness, and justice. Sociological legitimacy, on the other hand, is about the beliefs and perceptions of audiences, which determine if the exercise of authority is rightful and appropriate (Tallberg et al. 2018, p. 8).

Normative and sociological approaches raise different questions. The normative approach investigates by what ethical standards authority’s right to rule should be evaluated, while sociological inquiry raises the question of to what extent, on what grounds, through what

processes and with what consequences a governing authority is deemed legitimate by a particular audience.

Most of the research on legitimacy in global governance is focused on the normative approach. In this vein, some look at legitimacy from the input side of the normative concept – exploring values like transparency, accountability, and participation. Others take the output side of the normative approach, by assessing if authorities produce outcomes that are contributing to efficiency, justice and fairness (Tallberg et al. 2018; also cf. Zürn 2018).

Authority and legitimacy in the sociological sense may vary over time, across different social contexts, between institutions, and even across different issue areas. Therefore, what global authority is, where it resides, and how consequential and legitimate it is, are empirical questions, with the possibility of it being more solid in some areas and more liquid in others; strong in some issues and weak in others; and in some cases more or less closely linked to states (Krisch 2017).

Similarly, legitimacy beliefs and perceptions also vary across and within audiences. Therefore, the legitimacy of global governance institutions (GGI) cannot be sought in binaries or high / low and yes / no. Instead of drawing a generic conclusion that a particular GGI does not have authority and legitimacy, it is better to identify different types of authorities with different behavioural consequences and differing legitimacy beliefs.

Furthermore, authority and its legitimacy are not based on any single logic but are shaped by multiple sources. In this sense, legitimacy is more than just an approval of governance arrangements in global governance. It is based on confidence and trust in an authority's conformity with the common good than just one-time short-term satisfaction with a favourable outcome. For instance, the legitimacy of the UN Peace Mission should rest on an appreciation and belief of how it performs its functions for global peace and security as a common good, rather than satisfaction with some of its missions. Here, Zürn's (2018) conception of legitimacy narratives can be compared with Tallberg et al.'s (2018) legitimacy conception.

The fulfilment of a normative condition alone is not a guarantee of legitimacy; neither is the sociological condition alone a prerequisite for authority's legitimacy. It may be that some perceptions of legitimacy stand against certain normatively justified legitimacy standards. For example, the UNSC may perform badly when evaluated against normative criteria of fairness,



democracy, and justice; yet some audiences may regard the body as legitimate for other reasons, such as effective peace-keeping. Likewise, another GGI, like the International Criminal Court ICC, may be found in conformity with normative standards like the rule of law, but some audiences still view it as illegitimate due to its inefficient response to violations (Tallberg et al. 2018, p. 9). Therefore, both normative and sociological approaches to analysing GGIs' legitimacy and exercise of authority are required for a broader understanding of authority in global governance (see Figure 13 below).

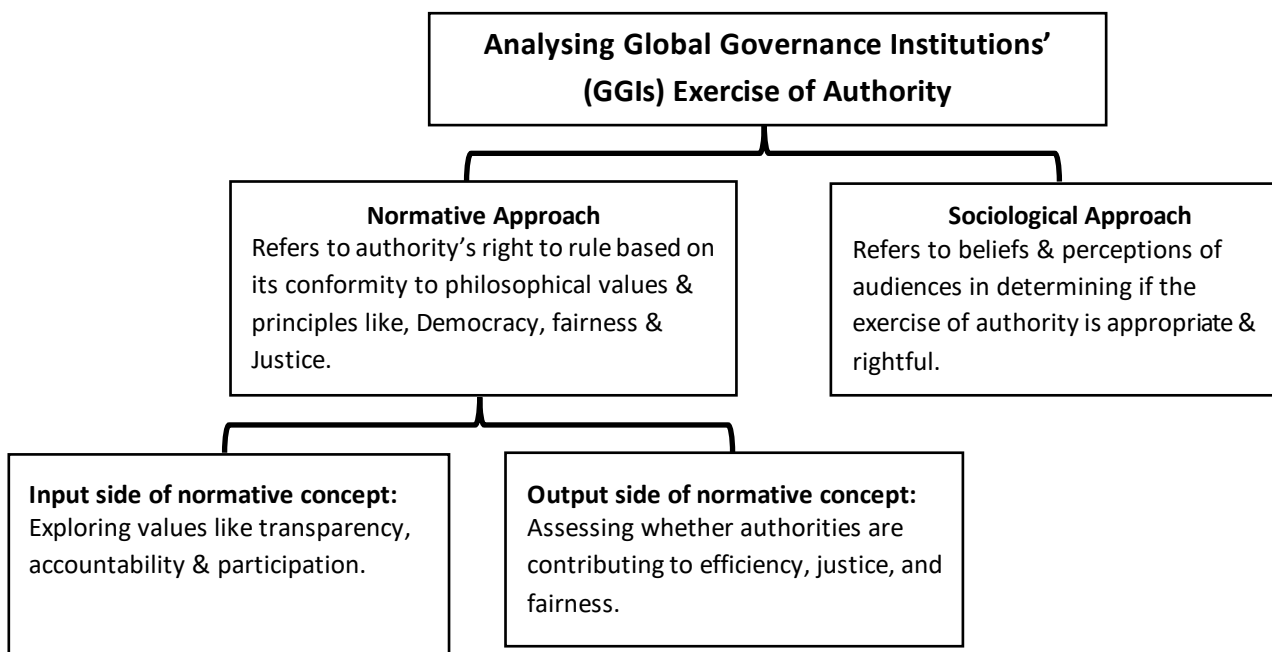


Figure 14: Global Governance Institutions' Exercise of Authority

A central question arises in this regard: what institutional mechanisms are required for liquid forms of authority in transnational governance to achieve normative political legitimacy? Two reasons are provided for why and how institutional legitimization mechanisms change with the liquidity of authority. First, the liquid characteristics of multiplicity and dynamism can affect the functional capacities of authorities in promoting collective values. For instance, they may pose special functional challenges for authorities aiming to advance the value of equal individual rights protection (MacDonald and MacDonald 2017).

Second, liquidity can have implications for the institutional mechanism of providing public assurances, because multiplicity and dynamism can complicate and restrict both their public visibility and social purpose in the context of normative principles. Thus, it intensifies the need

for active public assurances, or as Zürn calls it, social-communication-promoting legitimacy narratives.

As for the theoretical approach to political legitimization, in Kate and Terry MacDonald's (2017) and Zürn's (2018) studies, a hybrid approach to political legitimacy is taken, which I believe is very much in line with my study's broader approach of shifting grounds and sources of legitimation beyond contractualism. Likewise, their focus on institutional mechanisms of legitimization reflects their assumption that constitutionalised schemes cannot be accomplished on a transnational scale. This is in line with the broader shift, described by Michael Zürn (2018) on this issue, from constitutional rule to loosely coupled spheres of authority. Therefore, they argue that transnational legitimisation can best be attained through a combination of mechanisms that contribute only partially, and in differing degrees, to authorities' political legitimacy (MacDonald and MacDonald 2017).

The normative grounds of political legitimacy, as seen by MacDonald and MacDonald (2017), stem from the assessment of authority/institutions' functional capacity in facilitating collective action among their addressees in pursuit of values they share. Such a normative scheme of political legitimacy is carried out, firstly, through a process of strengthening and sustaining the valuable functions of authority in question and, secondly, through public assurances of its value and occurrence. Their approach, in this sense, comes closer to Zürn's idea of creating and communicating legitimacy narratives.

Now, different strategies are employed in achieving these two goals. Zürn's reflexive legitimation concept of authority, where the addressees acknowledge the limitation of their rationality, and at the same time recognise the expert knowledge of authority, which he refers to as technocratic legitimacy.

Kate MacDonald and Terry MacDonald, however, use two legitimization mechanisms. The first of these is public accountability, a standard-based model of accountability & compliance, where accountability relies on clear identification of standards defining responsible conduct. Such an accountability mechanism can strengthen and demonstrate authority's functional value, thus enhancing its political legitimacy. Second, they employ pragmatic experimentalism, an inquiry-based problem-solving model, more like a re-legitimation process, which demonstrates authorities' functional value through reforms (MacDonald and MacDonald

2017). If authorities fail to live up to their standards or authority value, then the addressees do not defer to these authorities. In a sense, the two mechanisms have a complementary relationship. While applying this analytical strategy of institutional mechanisms of legitimation, three questions are asked in case of any authority or institution in question. First, what is the valuable function of authority being subject to legitimization? Second, what are the systemic threats to authority's valuable functions? Third, what are some substantial institutional remedies (e.g., more transparency/participation for re-legitimation) to these challenges?

To sum up the above point, first, they observe that a codified-standard accountability mechanism is less effective in the context of informal, liquid, and loosely coupled spheres of authorities in global governance, as compared to the pragmatic experimentalist mechanism, which is better equipped to adapt to social change, conflict, and uncertainty in the case of informal and liquid authority. However, it runs the risk of institutionalised inequality and power bias. In this context, they suggest a hybrid model of institutional legitimation mechanisms. Second, their analysis provides a rationale for broader reflection on the implications of changing authority structures. The liquidity of authority is an important factor influencing the choice and change of legitimation mechanisms, but there are other aspects too to the changing authority structures, like reflexivity, social processes, and global politics. Third, their conclusions also divert attention to more empirical research in future on the varying authority structures in global governance. Lastly, from their analysis one gets the impression that liquidity in global governance authority structures is presented as a challenge/a threat, whereas it is the reality of our present-day global governance, because transnational governance is the embodiment of liquidity.

I believe, first of all, these new authorities with liquid and reflexive characteristics need to gain authority by actively and rigorously constructing their legitimacy, since they do not have the luxury of formal-legal or delegated right to govern. Second, Julia Black (2008), in her three case studies of transnational epistemic authorities, tries to analyse whether they do or do not exercise interpretive control over the norms, standards, or rules they issue. Again, it is right that in order to do so, they have to build legitimacy. The best example is the International Accounting Standards Board (IASB): despite its global significance, it still lacks any political or state foundations. It depends on governments recognising its rules as legally valid. Therefore,

it has to continually assert and maintain its legitimacy and authority. To this end, it lays emphasis on its technical expertise and procedural transparency (Black 2008, p. 8). However, it is argued that, in doing so, it is seeking to 'solidify' or crystallize its authority in a particular way at a particular time, but in contexts in which authority may be more or less fluid, legitimacy more or less contested, and thus the task of crystallization correspondingly easier or more complex.

Accountability problems and de-legitimation narratives arise because mechanisms in global governance are derived from domestic frames, inspired by an imagery of solid and contractual authority and institutions with strong formal powers. This approach is unsuitable and misleading, because authorities in global governance are liquid, reflexive, informal and relational, developed through the interaction of multiple actors or institutions (Krisch 2017). Standard accountability tools in this regard turn out to be ineffective because they only apply to part of authority structure (to the solid or formal-delegated pockets of authority UNSC). Thus, the more an authority structure is liquid and reflexive, the more limited the effectiveness of standard accountability mechanisms is likely to be. (MacDonald and MacDonald 2017).

Alternatively, in global approaches, as Michael Zürn (2018) puts it, public accountability is replaced by participation, inclusion, and transparency at different stages.

Likewise, these alternative accountability tools are also used as legitimation narratives for capturing the true nature of authority in global governance. However, much of the normative debate on the legitimacy of international authority continues to employ a solid framework of authority, where those who favour consent-based or more complex standards take legitimacy as the basis for an 'ability to command', as in the case of domestic government in the traditional image. But using the deference model of authority, and considering its liquid and reflexive characteristics, one can develop a framework of requirements for a more suitable conception of the legitimation of international authority. Michael Zürn's (2018) detailed account of legitimation narratives and legitimation problems serves as a good starting point.

The deference model can also help us to understand the sociological aspects of legitimacy better. This appears in the form of a social demand for legitimation, triggered by the politicization of international institutions or their actions (Zürn 2018). Some scholars argue that the liquidity of authority, with no clear site of decision-making in global governance structures,

calls for less political contestation and mobilization, which translates into relatively lower need for legitimation.

However, Julia Black (2017, 2008) and Michael Zürn (2018) argue otherwise. They argue that international institutions ‘in the absence of a formal-legal basis and in competition with counterparts, are often highly vulnerable and in need of constant legitimation through the use of legitimacy sources’, or in Zürn’s (2018) case, ‘legitimation narratives combined with social purpose’, rather than traditional, democracy-based ones. Legitimation sources, like expertise, moral principle, leadership, and problem-solving capacity, move to the forefront in the absence of formal, delegated powers. The major difference is that the legitimation narrative around liquid authority focuses more on the quality of decision-making in line with social purpose, rather than on the procedural, democratic foundations which are found around solid, formal-delegated authorities (Black 2017; Zürn 2018).

Lastly, in the case of law and legal sources of legitimation, the present-day new authorities in global governance pose a particular challenge. There are many informal norms on the global level which enjoy a fair amount of authority. Actors habitually defer to them, even if they lack a claim to be binding (Krisch 2017).

#### **4.7 The Multiplication of Authorities Between and Beyond the Public-Private Divide: Understanding New Authorities in Terms of Institutionalization, Legalization, And Participation**

To make sense of new authorities in global governance and to lay the foundational grounds for case studies on new authorities in global governance, my study begins with the multiplication of authorities between and beyond the public-private constellation. The multiplication of authorities in global governance is an area of research rigorously led by Janne Mende (2020), who argues that the study of global governance institutions must go beyond the usual two-pole public and private authority constellation and add a peculiar third constellation – business authority – in order to sufficiently capture the scope and forms of multiple authorities in global governance. She argues that ‘business authority as a new actor or new authority as I refer to in my study does not fit neatly into the public-private constellation’ (Mende 2020, p. 1).

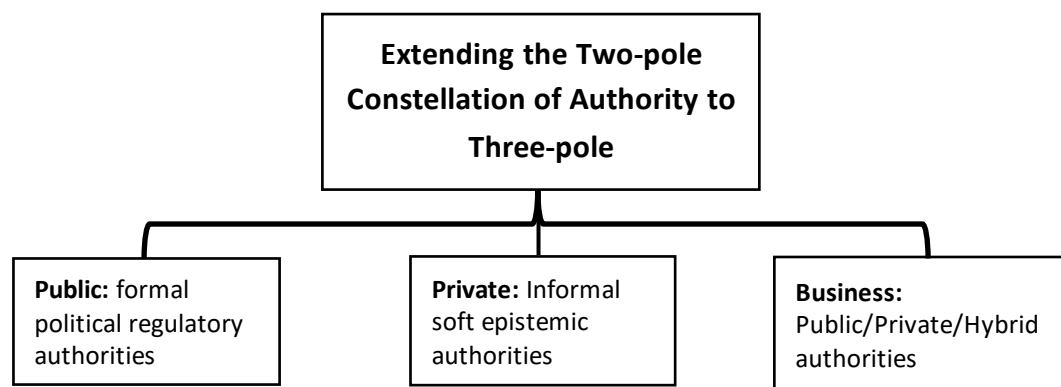


Figure 15: Extending the Two-pole Authority Constellation

There is growing criticism in global governance research and in human rights activism that companies (business authorities) are not adequately understood in legal, political, or conceptual frameworks. One reason for this is the failure of the two-pole public-private authority constellation to encompass business authority or any other authority that goes beyond public and private spheres. Mende (2020) is right in arguing that business enterprises as global governance institutions transcend the classification of public and private roles. Business authority, in this vein, differs from both public and private authority. However, to consider it as a peculiar third authority constellation would be going too far.

As per the definition of the exercise of authority in global governance, which is to regulate oneself and others and to engage in developing and interpreting norms and rules (for instance their discursive and agenda setting powers), the business authorities surely transcend the ambit of private authority. But still, companies are not officially mandated to govern others. In this sense, they are not public actors. On the other hand, however, multilateral agreements and the arbitration mechanisms which treat companies as global subjects and thereby contribute to their power, drag them out of the private sphere. Furthermore, private organisations do not require to legitimize themselves with the public for their private activities, but companies or business authorities do, because their power generates a demand for their legitimacy, as in the case of Facebook. This demand provides them with access to public legitimacy, which further pulls them out of the private sphere. However, they still cannot rise to the level of public authorities or that of states. Moreover, companies' reference to public interests even differentiates them from both public and private authority, because for states and international political organisations, the reference to public interests is the very basis and

rationale of their authority or existence. In contrast, business authorities are legitimately supposed to follow their private interests.

Against this background, it seems logical to agree that the mixture of public and private interests still qualifies business authority as private, since the concept of private authority in global governance already transcends both public and private boundaries. Mende (2020) is equally right about the fact that companies also exercise authority in a way that cannot initially be perceived as either public or private. She refers to these as hybrid authorities. This shows that it is important not only to differentiate between public and private authorities and private authorities assuming public roles, but it is equally important to distinguish business authorities from both public and private authorities. For instance, states as public authorities are directly subject to international law, since they are capable of making and implementing law, restricting liberty, using force, and impacting others and their freedom. They are public authorities because they are equipped with executive, legislative, and adjudicative powers for safeguarding public interests. These authorities are recognised as public in the sense that 'public' refers to those goods, processes, and actors which are recognised by a community as a matter of common concern. Under this definition, companies are not public authorities. However, since they also exercise international public authority alongside public ones and are widely engaged in public affairs and public interests, they cannot be considered as just private actors, either.

In short, enterprises seem to have both private roles (their self-interests) and public roles (their participation in global governance and in the provision of public goods). They also have hybrid roles that can neither be neatly classified as public nor private. It is in the face of this background that Mende (2020) argues to extend the two-pole constellation to three by creating a peculiar third constellation of business authority, which goes beyond the public and private divide.

However, as innovative as the idea of going beyond the two-pole constellation might be, it is still not sufficient to capture the full scope and forms of authority in global governance. Even if business authority is taken as a case study from the pool of private authorities, it is not justified to put it alongside the two major authority constellations – public and private – as a whole new authority constellation. There are three logical reasons against Mende's (2020) classification. First, she is right that we have to look beyond the public and private authority

constellations, if the end is to develop an understanding of the newly evolved authorities in global governance, which have assumed very public roles despite being private in nature and structure, such as Facebook, rating agencies, NGOs dealing with human rights issues and corruption, like Amnesty International & Transparency International. However, the means to this end, i.e., extending the two-pole public and private authority constellation to a three-pole constellation by adding business authority as a third constellation is, at best, insufficient in realizing the end and at worst not justified in its restriction to business authorities only. It is not only business authority in global governance that has assumed public-interest-related roles, relating to the public good or human rights, and tends to act both in the private as well as the public sphere in hybrid fashion. What about other private but non-business authorities in global governance, which also have assumed hybrid roles? For instance, the big tech companies and social media platforms, though they are also profit oriented, are more private companies than just business actors. How can their scope and forms be captured, and in which particular constellation will they then fall? The point here is that the cluster of such hybrid authorities is broad and the label of 'business authorities' as a third constellation of authorities is narrow and not all-encompassing.

Second, in the most recent literature, the trend is more towards making sense of these newly evolved authorities, which have different roles to play both in the private and public spheres and look for answers to why and how these authorities have changed and developed over time. How have they adopted these new roles, which go beyond their original mandate? And how have they become more intrusive? There are some scholars (Zürn 2018; Krisch 2017; MacDonald and MacDonald 2017) who have presented the concept of 'liquid authorities' in addressing these questions and making sense of private authorities also taking over public-interest matters directly in hybrid fashion. Or, they have tried to deal with the challenge of how and why some authorities do not neatly fit into the public or private authority constellation by focusing on the liquidity of authority. Now, to me it makes more sense that business authority – which Mende (2020) rightly pointed out does not fit neatly into the public or private authority constellation – is an implication of its liquid characteristic, which allows it to act both as public and private authority. Liquidity of authority is understood in the sense that it flows, does not have a fixed shape and is difficult to explain under a single framework or even constellation. It is known for its high degree of dynamism, with actors, sites, and weights



continuously shifting, making it difficult to locate, understand and control in global governance. In this vein, instead of adding business authority as a peculiar third constellation, it makes more sense to analyse business actors and many other private authorities which transcend the traditional public-private constellation and perform public interest functions under the liquid concept of authority. It creates a rationale and provides power of explanation for why either business authorities or, similarly, any other authority does not fit in the existing two-pole public and private authority constellation, when evaluated on the scope of their functions.

Third, what if, instead of classifying business authority as a peculiar third authority constellation, the two-pole public and private authority constellation is extended to three poles, but with Tallberg's (2018) 'Trans-national Hybrid Institutions' category put in between the public and private constellations? I believe that, in this way, we have three broad authority constellations: public, transnational hybrid, and private global governance institutions. This way, any authority in the private constellation that takes over a public role can be neatly put under the trans-national hybrid institutions constellation, be it a business or non-business authority (see Figure 15 below).

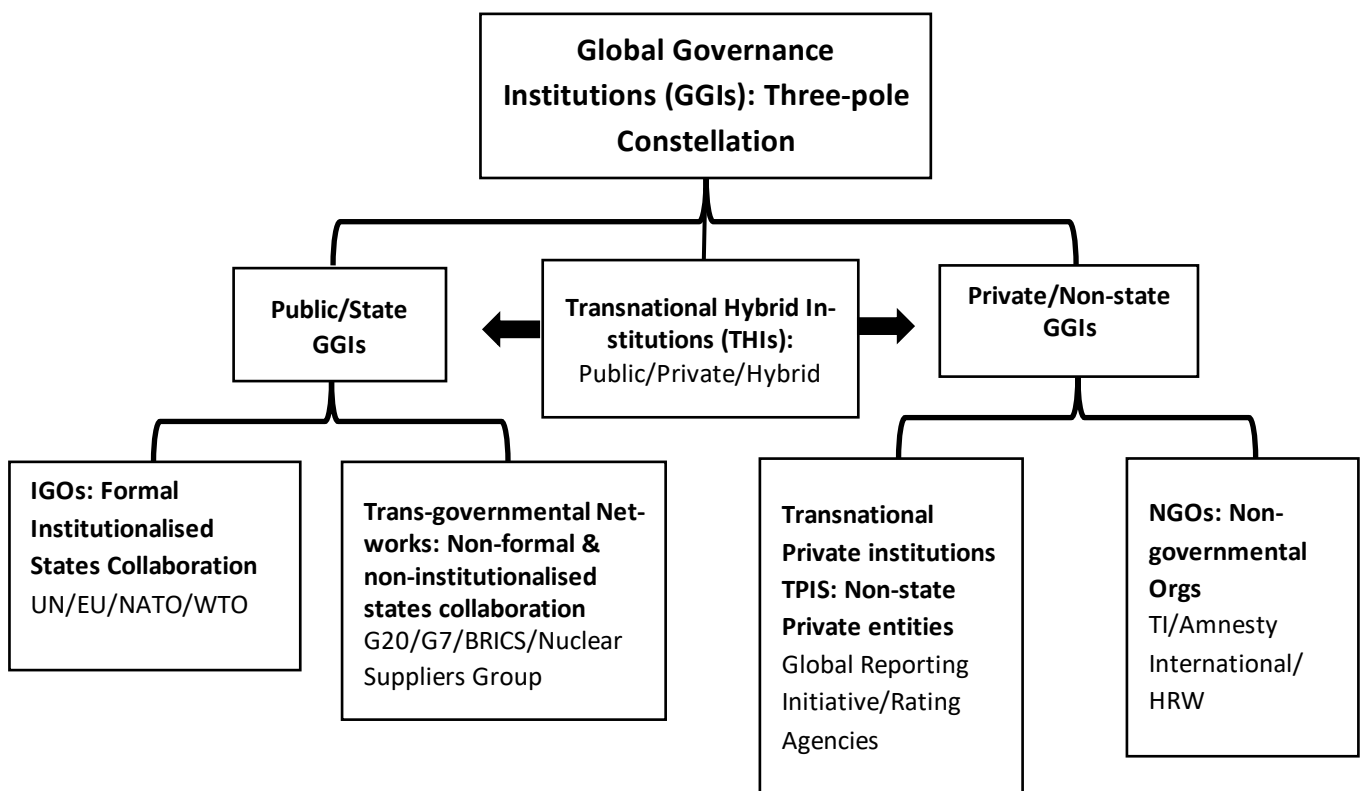


Figure 16: GGIs: Three-Pole Authority Constellation

Although I appreciate Mende's (2020) initiative in extending the usual two-pole constellation of public and private authority to a three-pole constellation by including business authority, I believe it is not enough to just add business authority as a third constellation for the purpose of understanding multiple authorities in the global governance landscape. Business authority, be it public, private or hybrid in form, still falls under the two-pole constellation of public and private authorities. It is just the liquid characteristic of authorities in global governance (Krisch 2017; Zürn 2018) which makes business authorities, or even some other authorities, hybrid in nature. Therefore, to develop an understanding of international authority, and particularly of new authorities exercising international public authority, one needs to go beyond the traditional, solid and political authorities. This means to look at the multiplication of authorities in terms of analysing how these new and diverse actors without legal character are exercising international public authority. This would require looking at a more intrusive aspect of the research issue, which is how authority, its nature, functions, and grounds of legitimation have shifted over time, rather than just extending a two-pole authority constellation to three-pole, or simply bringing another variant of authority to the table (in this case, business authority). If the purpose is just to show how business authorities do not neatly fall in the public and private constellation and exercise authority beyond public and private parameters, then I believe we are better served with Tallberg et al.'s (2018) classification, where business authority can be grouped under transnational hybrid institutions (as shown in the figure above).

The distinction between public and private authority is challenged in the global governance literature. In global governance, it is often difficult to draw a neat line between public and private authorities, because global governance contains private actors referring to public authority with the ability to assume regulatory functions (e.g., Facebook on taking down hate speech content). 'In this sense the concept of global governance then also refers to public authority, regardless of the question whether it is carried out by state or non-state actors' (Mende 2020, p. 12). In this regard, some argue that:

the public-private constellation in global governance does not result in blurring, fluidity, or dissolution of the distinctive lines between the two. Rather, this discussion on the two-pole authority constellation suggests understanding public-private authority relationship as internally and externally mediated; each supplements the other, each is shaped by the other, and neither would

exist without the other. Each constellation has specific functions for and effects on the other. At the same time, they remain distinct: they do not merge into each other, but retain their own way of working and logic, even though their (internal) content and (external) boundaries may change (Mende 2020, p. 12).

Concepts and definitions of what is considered public or private differ. However, their broad constellation remains as is. In global governance, state actors are considered public authorities, and non-state actors to be private authorities.

### **Triadic Framework:**

As my study broadly argues, one cannot make sense of authorities in global governance by using contractual state-model authority frameworks, Mende (2020, p. 3), likewise argues that the 'pre-global governance Westphalian theories of public authority cannot simply be transferred from the state to the global level', especially when scholars already disagree about whether to conceptualize new authorities as public or private in their exercise of international public authority in global governance. My study also aims at a broader understanding of authorities in global governance, one that goes beyond the solid contractual and command-and-obedience framework, to capture the forms and scope of authorities and how they are embedded in the public and private authority constellation.

Against this background, Mende (2020), unpacks the major components that shape authority in global governance. These components form a triadic framework of power, legitimacy, and the reference to public interests, and how they are embedded in the public-private constellation. This framework is not designed to overcome the differences in conceptions of authority. Rather, it asserts that, even in otherwise differing accounts of authority, these four components from a triadic framework are fundamental and constant to understanding and explaining it. It is on the basis of this framework – which is applied to business authority and its role in human rights – Mende (2020), argues that the two-pole constellation is not sufficient for understanding the authority of companies in global governance (refer to Figure 16 below).

'The triad between power, legitimacy, and the reference to public interests and their mutual influence and interdependence, embedded within the public-private constellation constitutes authority in global governance' (Mende 2020, p. 13). Although these four components may

not explain all the problems and controversies relating to the concept of authority in global governance, they do provide a common framework of empirical analysis of different approaches to authority, which lay different degrees of emphasis on each component. This framework is also useful for providing a uniform method of analysing the different forms of authorities in global governance.

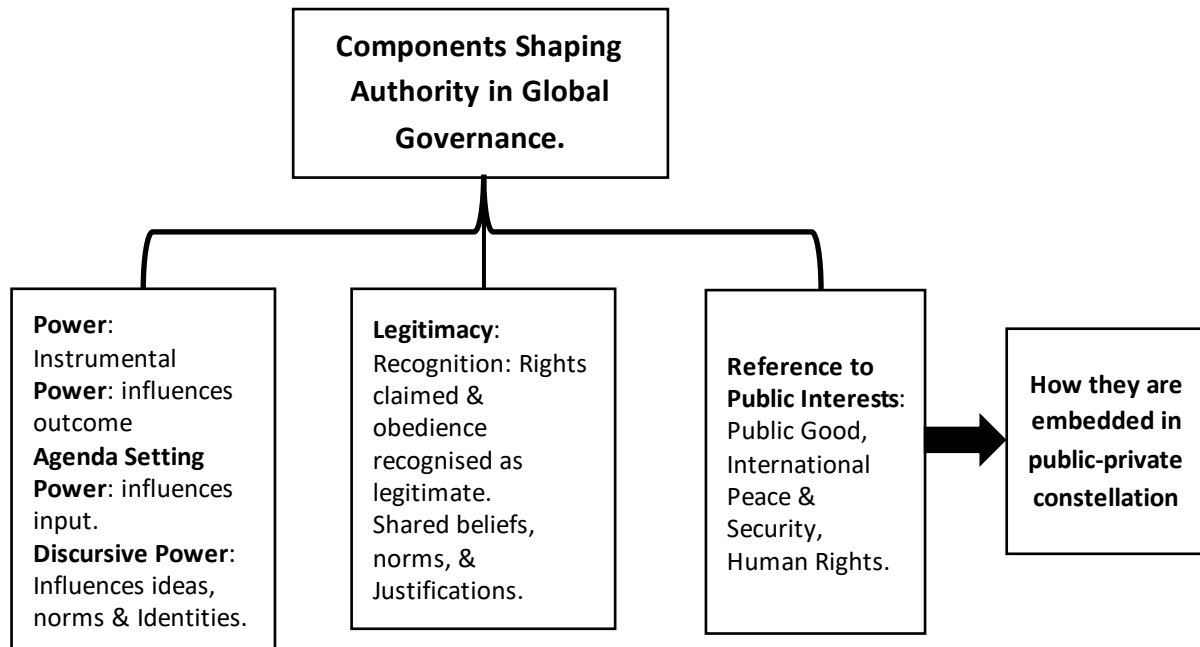


Figure 17: Components Shaping Authority

By analysing these triadic components of power, legitimacy, and reference to public interests, and how they are embedded in the public-private constellation, Mende (2020) developed a theoretical framework which she applied to companies as significant global actors, focusing on the case of business and human rights. Based on this, she suggests that business authority be considered as a peculiar third constellation between and beyond the public and private.

The triadic concept of business authority is no doubt both conceptually and normatively relevant. Conceptually, it allows us to analyse how authorities are established in global governance, and empirically it helps in capturing the powers of authorities (business or otherwise) which transcend national and intergovernmental legislation. Even the idea of going beyond the two-pole constellation opens a new area of debate on how authorities of non-state actors in global governance transcend the public-private constellation. Thus, it supports my broader study of how authorities have changed and developed over time, giving way to new and different forms of authorities at play in global governance.

#### **4.8 Absence of Habitual Obedience to Authority and Binding Legal Standards to Satisfy Expected Legitimacy of Authorities in Global Governance:**

There are two very distinct features of domestic contractual authority; namely, habitual obedience to authority and binding legal rules, which are absent to a large extent in global governance. In line with this fact, any understanding of authority in global governance drawn from the state imagery of the contractual solid authority perspective would result in a narrow and misleading understanding of authority. In this light, the research problem at hand is that the understanding of authority in global governance is dominantly embedded in traditional concepts of authority, driven by Weberian conceptions of the state. To Weber, the very foundation of the state is its claim to the legitimate use of force and coercion within a given territory for establishing order (Max Weber 1970). It is because of such a contractual command-and-obedience arrangement and claim to the legitimate use of power that most states rely on the 'habitual obedience' of their citizens under legal codes, with established and explicit use of physical coercion in case of defiance (cf. Smith 1986).

However, this solid authority, based on physically enforced command-and-obedience arrangements, or what Michael Smith (1986) calls the ability to rely upon legitimate authority for habitual obedience, is largely absent in the global governance system. Nevertheless, states are still considered both the source and the exclusive domain of legitimate, public authority. This is true in the states' exercise of authority in both national and global affairs (Hall and Biersteker 2002). In this regard, not only are states considered to be the principal actors in global governance, but they are also considered to be the only legitimate actors with authority on the global level.

However, during the latter half of the 20<sup>th</sup> century, a number of theoretical and empirical challenges emerged against this traditional, contractual, state-model conception of authority, at least in the global governance system. The concept of authority as the other half of anarchy in global governance started to crumble. The simple, Hobbesian state of nature, and the command and obedience functionalist understanding of authority seemed to be narrow and misleading in the face of technological advancement, globalization, and changing realities. These changes ranged from the blurring of the boundaries of domestic and international governance, the rise of authorities on the global landscape with no legal and formal grounds of

legitimation, and forms of governance and institutional regulatory arrangements without the presence of state or interstate institutions.

All these changes in modern global governance resulted in the rise of authorities beyond the state, which appear to have taken authoritative roles and norm-making functions. They include but are not restricted to private authorities: they are authorities with no legal character or solid grounds of legitimacy. They fail to fall neatly into the public-private divide and tend to be hybrid in their exercise of authority, for they can be seen to influence matters related to the public sphere, rather than exercising authority just in private matters.

These new actors are neither states nor state-based and nor do they exclusively rely on the actions or explicit support of states. But they still manage to act as public authorities, despite being private and business actors, as if they have been accorded some form of legitimate authority. That is because they possess expertise in or exercise authority over some important issue, domain, or specialised areas of concern. They claim to be, perform as, and are recognised as legitimate by some larger public (which often includes states themselves) as authors of policies, practices, rules, and norms. They set agendas, they provide innovative solutions, establish boundaries or limits for action (refer to the case study of big tech companies). They certify, they offer salvation, they guarantee contracts, and they provide order and security. In other words, they now perform functions that were traditionally, and exclusively, state prerogatives. They act upon both public and private matters (Hall and Biersteker 2002).

These new authorities are based on a social relationship between those who claim or exercise authority and those who are subject to or recognise it. Their relationship is a public one, meaning the claims, legitimation narratives, and recognition of authority involve an open, visible process of legitimation, de-legitimation, and re-legitimation. This kind of public relationship does not, however, mean that a state or public institution must be involved, or be wielding authority, although they might even be party to recognizing these authorities. Nonetheless, it does show that the social recognition of authority should be publicly expressed. It is this kind of legitimacy that opens the possibility for the emergence of private, non-state, or non-state-legitimated authority and the possibility that there are new authorities beyond the state and beyond the public-private constellation, which have not been fully captured in global governance studies and are difficult to make sense of in the existing state-centric international authority structures.

### **Absence of Binding Legal Standards:**

From the public law perspective,

any governance activity by international institutions, be it networks of administration (like by Interpol or FATF) or intergovernmental (like by UNSC or UNESCO) or even private institutions (like credit rating agency Moody's) should be considered an exercise of international public authority if it affects individuals, private associations, states, or other public institutions and their freedom (Bogdandy et al. 2008, p. 376).

For instance, Moody's, a private transnational organisation recently cut Pakistan's sovereign credit rating by one notch, landing it in junk territory Caa1 from B3, which would negatively impact its potential for tapping international markets for funds and borrowing (Al Jazeera 2022). This shows that international institutions, be they international public authorities with legal personality or private authorities without any binding legal character or claim to obedience, can have a strong legal or factual impact on national and domestic issues. Therefore, some of the new global governance scholarship, like that of Bogdandy et al. (2008) and the public law scholarship, focuses on the development of legal standards to satisfy the expected legitimacy of authorities in global governance.

Although my study makes use of Bogdandy et al.'s (2008) account because it focuses specifically on private authorities with public functions from a public law perspective, for the sake of clarity to readers, my study distinguishes between public, private, and transnational hybrid authorities. By the public law perspective is meant constructing a legal understanding of and developing a legal framework for the exercise of public authority.

This study, from the outset, categorizes these different forms of authorities in global governance and defines international public authorities as authorities which are legally instituted, usually by states, also called state-delegated authorities, which are legally entitled to act as international public authorities in the strict sense (refer to Figure 2 in the Introduction chapter). No doubt, this distinction is not lost on Bogdandy et al (2008): they put forth an argument that any governance activity in global governance (be it by state-delegated authorities or private) is considered an international public authority if it impacts others and reduces their freedom. This central argument of theirs comes from their legal concern for informal and private authorities with public functions escaping global responsibility and accountability due

to the absence of binding legal standards to satisfy the legitimacy expected of them. It is for this reason that Bogdandy et al. (2008) in their scholarship suggest a shift towards the exercise of international public authority. This is what my thematic case study on 'Global human rights responsibilities going beyond the Westphalian paradigm of human rights protection' sets out to do.

At the end of the day, all these authorities, be they intergovernmental public authorities, administrative authorities (also known as politically assigned epistemic authorities (Zürn 2018)), like Interpol or the IAEA, private non-governmental authorities, or transnational private hybrid authorities with public functions like big tech companies or PMSCs, they all exercise authority in global governance that affects others and their freedom. By the exercise of authority, be it authoritative or non-authoritative, is meant 'the realization of that capacity, in particular by the 'production of standard instruments' like decisions and regulations but also by the dissemination of information like rankings' (Bogdandy et al. 2008, p. 1382). Different authorities will use different production of standard instruments, both binding and non-binding, in order to gain obedience and deference (refer to Figure 17 below).

Traditionally, by definition, 'authority' refers to the binding production of standard instruments, where it 'modifies the legal situation of a different legal subject without its consent' (Bogdandy et al. 2008, p. 1382). However, this is a very narrow understanding of authority, typically used in contractual and state imagery. Therefore, my study argues that the concept of authority needs to be understood on broader lines beyond contractual and state imagery. In the words of Bogdandy et al. (Bogdandy et al. 2008, p. 1381), 'defining the exercise of international public authority requires a considerable conceptual innovation, because the concept of public authority has been coined in light of the state's monopoly of legitimate coercion and sovereign power over individuals'. To make my modest contribution to the required conceptual innovation, my study goes beyond contractual solid command-and-obedience authority in state imagery and includes new authorities which are not legally instituted but still perform critical public-interest functions. This is important because the capacity to exercise public authority can also occur through the production of non-binding instruments which only condition others' behaviour, as in the case of private authorities with no legal character. However, these non-binding instruments are as consequential as the legally binding standard instruments produced by any state-delegated public authority, because they can build up



pressure on their legal subjects to follow their suggestions, requests, and the recommendations in reports, and pay attention to their rankings.

In fact, the exercise of public authority in global governance often occurs through the establishment of non-binding standards, which are followed or at least respected because the benefits of observing them outweigh the disadvantages of ignoring them. In other words, legal subjects can also be conditioned by instruments without deontic exercise of authority, such as statistical data, rankings, and ratings. This is a communicative power of authorities, which the subjects can only avoid at some cost, which may be reputational, economic, or political.

Why do my study and some new scholarship, like Bogdandy et al. (2008), Mende (2020), Zürn (2018), and Raz (2006) argue for a broad understanding of the concept of authority? Because the behaviour-conditioning acts by these authorities, though not legally instituted, can affect others and constrain their individual freedom as much as binding acts by any state-delegated authority. Furthermore, it is a well-known fact that public law, which serves both a constitutive function as well as a limiting function, is necessary for the legitimacy of public authority but applies only to authoritative binding acts, not to non-binding acts.

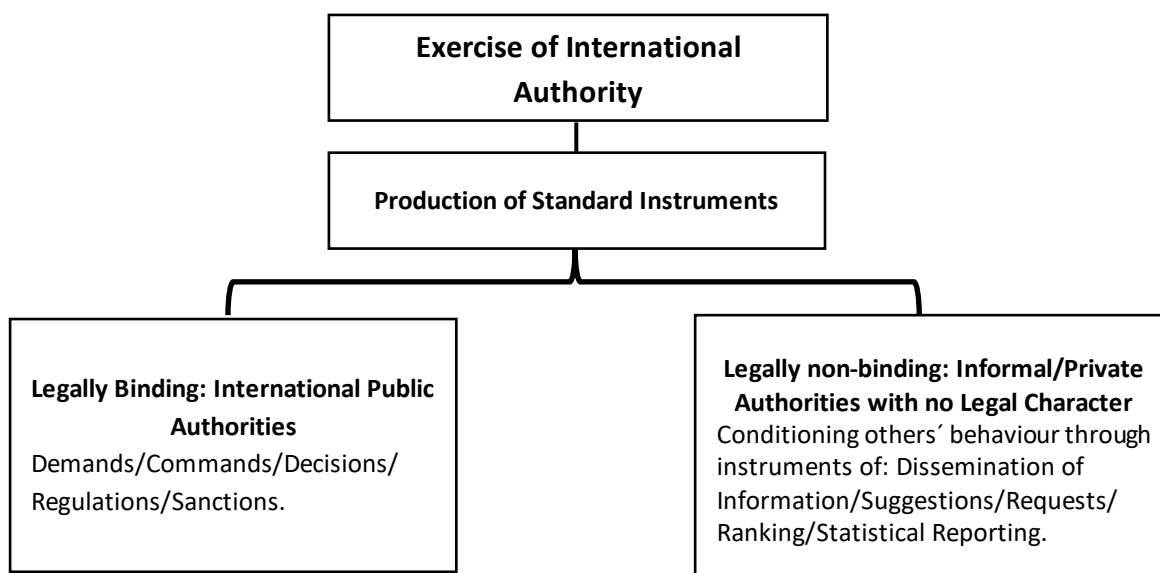


Figure 18: Production of Standard Instruments

In this regard, however, one of the main arguments of my study is that institutions based on private law but performing public-interest functions, also called transnational hybrid institutions, though they lack any delegated authority, may carry out activities or perform functions

which are as much of public interest as those carried out by state-delegated authorities with a legal character. This makes it necessary to clarify or empirically point out which entities exercise international public authority, because such authority may be exercised by numerous formal, informal, delegated, or non-delegated private entities.

In the simplest explanation, public authority in global governance is exercised by institutions which are state global governance institutions with international legal personality. But global governance and the rise of new authorities remind us that there are other international institutions also exercising public authority. There are state global governance authorities divided into formal, institutionalised interstate governmental organisations with legal personality, like the UN or WTO, and informal, non-institutionalised state collaborations, like G7, G20 and BRICS.

And then, on the other hand, there are non-state global governance authorities in the form of NGOs and transnational hybrid authorities; private actors with public functions (refer to Figure 2 in Introduction chapter). These non-state private authorities, formed under private law but with public functions, wield significant political clout and their acts raise concerns of legitimacy in the absence of binding legal standards to satisfy the legitimacy expected of them. These are private institutions in the sense of organisational sociology; though they might not have legal personality similar to that of international public organisations, nonetheless they are actors exercising public authority. It is this aspect that qualifies these private authorities with public-interest functions to be liable under public law on equal footings with the state delegated authorities (refer to the case studies in chapter 4.10).

Because any governance activity that directly effects the public good or acts in a situation where the interests of different social groups have to be dealt with, questions of legality and legitimacy arise, and public law comes into effect (Bogdandy et al. 2008, p. 1384). Therefore, authorities that do not necessarily exercise public authority in a strict sense should be subject to the same legal requirements which are applicable to comparable exercises of public authority, for they take part in global governance.

Understanding governance activities on such broader lines by the legal standards applicable to comparable exercises of international public authority highlights two aspects. First, public authorities in global governance can and should be regulated in more effective legal settings. Second, it also provides an empirical argument that private forms of organisations seem to

have even more severe legitimacy deficits than do public ones (Bogdandy et al. 2008, p. 1385). This leaves the legal instruments of global governance in a more state-centric situation, which leads to uncertainty as to which legal subject is legally responsible for the exercise of authority. Therefore, many of these private and informal international institutions function as 'the less legalized brethren' of formal legal state organisations (Bogdandy et al. 2008, p. 1386). This makes it very difficult to ascertain the legality of an exercise of international public authority, in particular by private authorities with public functions, because there is only a very basic legal framework regulating the activities of international institutions. Such an absence of legal standards results in a complicated situation, where international institutions exercise public authority which can be considered as illegitimate but nevertheless as legal, or not illegal, because of the lack of appropriate legal standards (Bogdandy et al. 2008, p. 1389). For instance, the legitimacy of some activities of private military and security companies PMSCs and big tech companies may very well be cast into doubt and even criticized for human rights concerns, yet they can certainly not be termed illegal, because they do not fit any applicable legal standard due to their non-binding character.

According to Bogdandy et al. (2008), public law based on a combination of constitutionalisation in the spirit of rule the of law, administrative law, and most of all, international institutional law in the sense of regulating international organisations' external activities, can be used as the basis for the analysis of different authorities in global governance. A common factor among the approaches discussed is the aim of understanding, framing, and taming the exercise of international public authority in the post-national constellation. They aim to make the exercise of international public authority more efficient and legitimate. Although the exercise of international public authority from a public law perspective already refers to any governance activity by any international entity (be it public or private) that affects others and reduces their freedom, I reiterate that public law and particularly international institutional law should not only encompass the activities of state delegated international organisations, but also that of other institutions with no formal legal basis, like private authorities performing public functions. Therefore, this study in Chapter 4 sections 10 and 11 on state-centric global governance, proposes to look beyond the Westphalian paradigm of global responsibility and accountability in order to make a case for a binding legal framework of governance for new authorities.

My study, as per the demand of the research problem, is designed in such a way that understanding of the exercise of authority in global governance moves from general to specific (from the concept of authority in general to new and specific authorities as case studies). The study, therefore, also makes use of the inductive theory-building approach, based on thematic case studies to empirically analyse new authorities. The case studies included in this study are categorically selected to reflect upon the following main variables of the study:

- The case studies selected aim to reflect the study's hypothesis that there are new authorities which are private but perform public-interest functions. The reader can observe the face validity of the rise of new authorities in global governance with the help of these case studies.
- The case studies selected aim to reflect that the authority structures and legal instruments in global governance are too state-centric, so that these new authorities are not identified as having global responsibility and accountability.
- The case studies selected aim to reflect the informal and non-legal personality of authorities.
- The case studies selected reflect the wide array of production of standard instruments for the exercise of public authority.
- The case studies selected tend to provide 'procedure-focused understanding', which means elaborating on their actions and 'production of standard instruments' (Bogdandy et al. 2008) for exercising binding or non-binding authority. They also reflect on the external effects which these instruments will produce.
- The case studies selected reflect not only upon the legal qualification but also on the legitimation of instruments, which have external effects and lead to serious legitimacy concerns, because, as mentioned above, legitimacy and legality of an action are not the same things.

As the focus here is on the concept of authority and the exercise of authority, my study focuses more on the operative and legitimation and legal side of these authorities than on their infrastructure side. The cross-cutting analysis built into these thematic case studies are used in the next chapters to address topics like global responsibility, human rights accountability, and legitimacy and legality principles in relation to case studies of big tech companies and PMSCs.

#### **4.9 Public International Law is Too State-Centric: A Case Study of Private Outer-Space Companies**

In the recent past, outer-space research, resource exploration, and commercialization by private corporations have increased, with more private entities than ever taking an interest in space mining (Weinzierl and Sarang 2021). The technical complexities and high costs incurred in such activities, in fact, make the participation of private space actors in the field of outer-space research and resource exploration natural and essential (Ben-Itzhak 2022).

However, a problem arises from the fact that our global governance structure, and more specifically international space law and the regulation of space activities, are still highly state-centric, which means that private actors are not only left out of the outer-space global governance scheme, but as business authorities they are also exempted from any normative function and responsibility (Vlasic 1981; Mitchell 2018).

My study, by taking private outer-space exploration corporations as a case study, aims to address the research problem of studying international authority or global governance in a very narrow, state-centred, and command-and-obedience framework of solid authorities. Applying pre-global governance Westphalian theories of public authority to the global level will not capture the fact that authorities in global governance have shifted and developed over time, thus resulting in new or multiple authorities with different functions, legitimation, and behavioural implications.

Space captivated human interest and curiosity even before the invention of telescopes. This fascination with the cosmos is even reflected in present-day science-fiction spacefaring series, like Star Trek and Star Wars. However, these fictional and imaginary space voyages have long been turning into reality. Since the Soviets' successful launch of Sputnik in October 1957, outer-space shifted from the realm of science fiction and speculation to the realm of real international concerns. Although, at its beginning during the Cold War period, only the superpowers had the capacity to launch large objects into space, place satellites into geostationary orbit and blast humans into earth orbit or beyond, space activities have recently shifted from being exclusively carried out by the national governments of certain states to being taken over by the private sector. With growing technological advancement aimed at space mining, space tourism, and space commercialisation, the private sector's competitiveness has also rapidly increased.

#### 4.9.1 Space Exploration: The Rise and Competitiveness of the Private Sector:

The space activities of the US through the National Aeronautics and Space Administration (NASA) inspired many generations of researchers and innovators around the world. But NASA's role has recently diminished because of the rise of private, global space actors. Space related activities are expensive, but are a relatively minor line item in the U.S. budget.

##### NASA's Share of the U.S. Budget

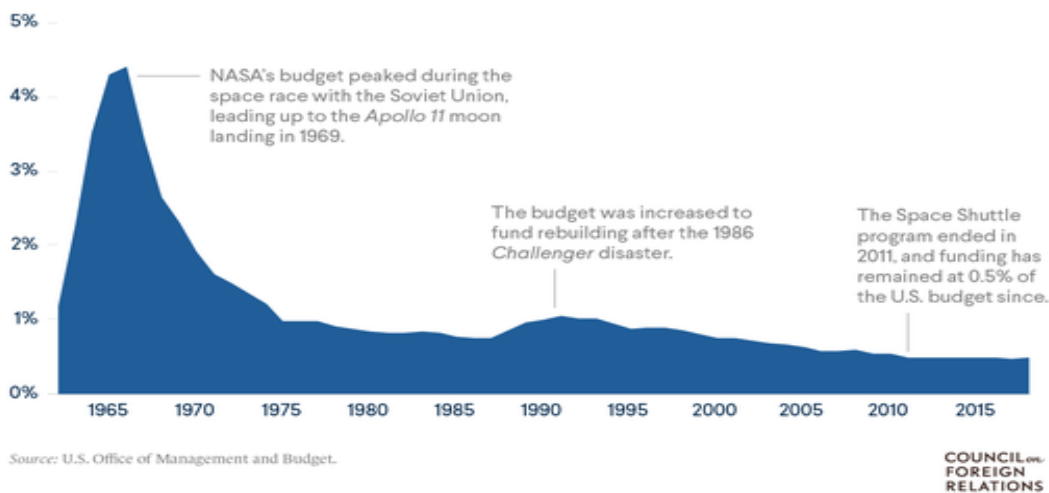


Figure 19: NASA's share of the U.S. Budget

'NASA's spending peaked at almost 4.5 percent of the federal budget in 1966, declined to 1 percent by 1975, and has gradually fallen to about half a percent in recent years' (Markovich 2013). In comparison, defence spending has hovered around 20 percent of the budget in recent years.

In 2011, after the retirement of the US Space Shuttle, NASA did not have its own carrier to send astronauts into space by itself for almost a decade. They had to ride Russia's Soyuz capsule to the International Space Station (ISS) at a cost of around \$82 million per seat (Markovich 2013). And now the outer-space private companies are taking over the task of providing shuttle services to ISS.

Filling this gap and responding to the demand, the U.S. private sector has not just been taking interest but has also shovelled huge investment into space. This is evident from the fact that in May 2020, SpaceX became the first private company to successfully ferry two NASA astronauts to the ISS, using its Falcon 9 rocket launched from U.S. soil for the first time in nearly a

decade (Markovich 2013). On this occasion, then-president Trump said the launch 'makes clear the commercial space industry is the future' (Markovich 2013). After this, NASA also officially certified SpaceX to start routine missions of sending astronauts to the ISS. SpaceX also announced its plans for space tourism to the ISS.

Historically, NASA had already been using 80-90 percent of its budget on private contracting for the purpose of designing and manufacturing rockets and spacecraft, with NASA taking oversight of the project and operating the equipment. But now NASA also privatizes operations, and this brings many governance and legal challenges and unknown risks. On this issue, Astrophysicist Neil deGrasse Tyson believes that while private enterprises can handle routine space flight, they are unable to bear the large and unknown risks of advancing the space frontier.

SpaceX is a private company founded by billionaire Elon Musk in 2002. After its successful launch of Falcon 1 in September 2008, it became the first private company to send a rocket to orbit the earth (Mitchell 2018). SpaceX has become a leader in private space initiatives, mostly because of its innovative reusable rockets, which make space travel and exploration affordable and are reasons for the company's ambitious Mars landing plans.

In February 2018, SpaceX successfully launched another rocket, Falcon Heavy, standing 23 stories tall, which is the largest rocket ever built. In addition to the successful payload launch on the Heavy Falcon, the bottom half of the rocket landed safely back on Earth so that it could be reused. The Falcon Heavy's payload, destined to orbit Mars, was a Tesla car (Malik 2018). Falcon Heavy is a ground-breaking asset to the company, for it aims to send it to Mars twice in 2022 to ferry cargo and supplies for a future manned mission (Mitchell 2018). Alongside its private commercial plans, SpaceX has also partnered with NASA to resupply the International Space Station (ISS), and the US Airforce has also granted it a contract for the development of a rocket propulsion system (Mitchell 2018).

Besides SpaceX, there are also other space farers with ambitious missions focused on space mining. In this regard, NASA announced in 2017 its plan to visit the asteroid 16 Psyche, which is located in the asteroid belt between Mars and Jupiter and is unique among asteroids because, first, it is made up almost entirely of metals similar to Earth's core, and second, it has

an estimated value of \$10,000 quadrillion, whereas the estimated world GDP in 2016 was about \$122.6 trillion (Mitchell 2018).

Although NASA's mission is one of discovery, not mining, there are private companies with high ambitions and missions for space mining. However, private companies with an interest in space mining may not initially target 16 Psyche because it is located far from Earth and the technological advancement required to reach it would be costly in terms of both time and money. It is just that the value of the asteroid indicates why there is heightened private commercial interest in space mining and why this could become a matter of discord and global governance in the face of a weak and outdated international space regime.

The US and its private companies are not alone in this race to take advantage of space resources. In 2016, Luxembourg offered to provide a \$227 million fund to assist private companies in the development and realisation of space mining ventures. Planetary Resources is a beneficiary of Luxembourg's space investment and believes that asteroids can unlock the economy of the solar system. Another U.S. company, Deep Space Industries, has signed an MoU with Luxembourg for a joint venture in developing and testing an asteroid prospecting spacecraft named 'Prospector X' (Mitchell 2018, p. 442).

In further encouraging mining expeditions, Luxembourg in 2017 became the second nation in the world after the United States, and the first in Europe to have passed a law on creating property rights for any material gained from Moon or asteroid mining. Luxembourg's status as one of the two countries racing to commercialization is a little surprising because Luxembourg, unlike the USA, is not itself a spacefaring nation; it does not even have a space agency. Nevertheless, in 2017, it made public its intentions of creating a space agency, whose major focus would be the commercial use of space resources, which means more power to private business authorities. Again surprisingly, despite Luxembourg's interest in space mining, asteroid mining was not the first commercialized private space venture that Luxembourg jumped on. Rather, it started by giving satellite television broadcasting rights to a private company in 1985, at a time when all other space satellites were owned and used exclusively by national governments through international agreements (Mitchell 2018). At present, if the planetary resources and deep space industries become successful, the potential rewards for the tiny nation could be even greater.



The growing number of space companies see a commercial future in space beyond NASA contracts and satellite launches. U.S.-based Space Adventures offers customers the opportunity to orbit Earth and experience the views and weightlessness of space travel. Other firms have pursued asteroid mining, which supporters believe could supply a new abundance of precious metals and rare earth elements. Jeff Bezos, founder of Amazon, has said he plans to 'build a road to space' so that humans will one day be able to sustain colonies beyond Earth (Markovich 2013).

Advancing on his vision, the former CEO of Amazon, Jeff Bezos who stepped down from his position in Amazon to focus on his space exploration and tourism project through his private space company, Blue Origin, took a suborbital flight into space in July 2021. The extent of growing private actors in the space sector, can be felt from the fact that Jeff Bezos was the second billionaire in just over a week to ride his own spacecraft (Dunn 2021).

Apart from some ordinary and subjective criticism of Jeff Bezos and other billionaires' ability to build means and roads of escape from the planet earth – considered by some to be a sinking ship – there are more serious legal concerns with the growth of space commercialization (Nolan 2021). Jeff Bezos, in a media talk after returning to earth, said, 'the intention of this tourism mission and auctioning seats on space flights is to colonize space for the benefit of earth' (Luscombe 2021). He further added that 'the point of doing it is to practice. Every time we fly this tourism mission, we practice for Blue Origin's planned reusable heavy-lift launch vehicle, which is important to [my] vision of ultimately moving industry off the planet' (Luscombe 2021). He further said that his vision is to build a road to space, which means starting a kind of business and commercial activity and, therefore, Blue Origin has opened sales for space tourism flights. The private sector has apparently started to look for business activities in space, ranging from space tourism, commercial-scheduled flights, colonising space for further benefits like importing rare minerals or more ambitiously moving industry off the planet. This complicates the authority analysis in global governance, given the fact that most of the global governance scholarship is state-centric and authority's theoretical frameworks are contractual and narrow, with a simple public and private authority divide, leaving no room for analysis of these new and multiple authorities on the rise.

Rapid growth in the number of private outer-space research and exploration or business companies and the subsequent commercialisation of space gives birth to legal and governance

concerns, as these companies seek to further exploit the space economy. Regardless of the national laws passed in the USA and in Luxembourg that give ownership rights to companies that harvest space materials, these are nonetheless in contradiction with the Outer-space Treaty. Here, a more serious concern emerges from the lack of international space governance and regulation of these new actors and authorities. International legal space instruments in their current form are inadequate and obsolete to effectively regulate space commercialisation, like space mining and tourism.

Now, the question is: do international authority, global governance structures, and international legal instruments have what it takes to regulate these private business actors? What does it mean for the architecture of authority in global governance? With the rise of outer-space companies, it seems that both private actors and space-faring states can be imagined as sources of authority in modern space governance: should these space companies be considered business authorities, private authorities, or transnational hybrid authorities, for they are taking over what was previously solely state domain? Do they have global responsibilities and obligations, and if so, are these like those of states or private entities?

All these concerns with regard to the increasing private business actors in the outer-space and exploration area emerge because of them acting as new authorities in global governance, with state-like public functions. This results not only in uncertainty but also in making the conceptual framework of authority problematic.

#### **4.9.2 Legal Background:**

Outer-space activities are generally governed through the United Nations' international treaties, developed through the Committee on the Peaceful Uses of Outer-space (COPUOS). Alongside this, domestic law in the USA and other nations can fill in the gaps by further regulating space activities (Mitchell 2018). For a better understanding of outer-space governance, it is wise to categorise international treaties and domestic laws relating to space activities separately.

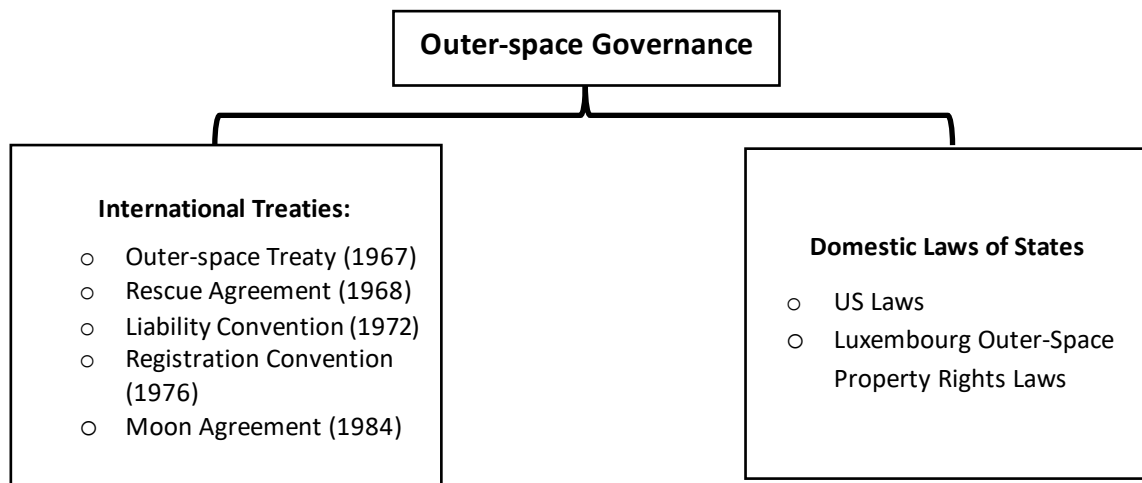


Figure 20: Outer-Space Governance Legal Instruments

### **A. International Treaties:**

There are five space law treaties. The first is the Outer-space Treaty 1967, on governing the activities of states in the exploitation and use of outer-space, including the moon and other celestial bodies. The second, Rescue Agreement 1968, is an agreement on the rescue of astronauts, the return of astronauts, and the return of objects launched in the space. The third, Liability Convention 1972, is an instrument on international liability for damage caused by space objects and activities. The fourth, Registration Convention 1976, provides for the registration of objects launched into space. Lastly, the Moon Agreement 1984, aims at governing the activities of states on the moon and other celestial bodies.

Two of these international treaties, the International Space Treaty 1967 and the Moon Agreement 1984, are of most relevance to my study's hypothesis. There are multiple new authorities (like the private space companies mentioned above) at play in global governance, which are not accounted for by the existing conceptual framework of authority, because of its state-centric and contractual, command-and-obedience orientation. The international space regime and the legal and other governance instruments, in this sense, show that the private outer-space research and exploration companies as global business authorities are omitted from authority analysis, regulation, accountability, and human rights matters because the existing model of outer-space global governance and instruments of authority is outdated and geared towards states only. The Outer-Space Treaty was created in 1967, when only two nations, the U.S. and the Soviet Union, had the capacity of launching anything into space.

### A1 Outer-Space Treaty (1967):

The Outer-Space Treaty is the most-used treaty because it serves as the basis for the others and has provided a guideline for the development of national space law. As of February 2021, 111 countries have ratified the treaty, including all the nations with significant space-faring capacities. Since the Outer-Space Treaty was developed during the Cold War, it is no surprise that it reflects some of the Cold War sentiments and concerns. In fact, the very agreement on the mutual use of space during the 1950s was pre-conditioned on the demand by the Soviet Union for the US to remove nuclear warheads from its forward-operating basis, which the US declined (Mitchell 2018). Therefore, when the agreement was reached, its main objective was cooperation and prevention of the militarization of space. It is important to briefly go through some of the articles of the treaty, to have an idea of how international the outer-space regime, or this particular legal instrument, is state-centric, with vague or no mention of the role of private companies.

Article I: provides that the exploration and scientific investigation of outer-space, the Moon, and other celestial bodies should be carried out for the common good and benefit of all countries and 'be the province of all mankind' (United Nations 2002).

Article II: Forbids any nation from taking over sovereign control of the Moon or any other space object.

Article III: Provides that the state parties should conduct the exploration of space in ways which ensure 'maintaining international peace and security and promote international cooperation and understanding' (United Nations 2002).

Article IV: Extending on the nuclear fear and concern of the time, it bans the use of 'nuclear weapons', 'weapons of mass destruction', 'military bases, installations and fortifications', and 'testing of any type of weapons' on any celestial body (United Nations 2002).

Article V: Provides Astronauts ambassador-like status, obligating states to provide them any kind of assistance whether in space, on the territory, or on the high seas of earth.

Article VI: Although the treaty did not focus directly on private space activities, this does not mean that its creators were oblivious of the possibility, or did not foresee the need to attend to it with a specific reference to 'non-governmental entities'. It is evident from Article VI,

which demands that the activities of both government and civilian personnel in space should be authorised and supervised by their respective governments.

Article VII: Obligates the state parties involved in a launch to assume responsibility/liability for damage caused by the launch to another party's property or personnel.

Article VIII: Allows state parties to retain control over their vehicles, crews, and objects while those objects are in space. But this article is problematic, for it is silent on the ownership of materials acquired from space objects like minerals mined from asteroids.

Article IX: Tries to make space exploration a joint venture between nations in a manner that preserves space and protects the Earth from any contamination from space activity, 'so as to avoid ... adverse changes in the environment of the Earth' (United Nations 2002).

Article XI: Obligates state parties to notify the United Nations and the public as much as possible about the 'nature, conduct, locations and results' of space activities (United Nations 2002).

Article XII: Provides that every state party is entitled to visit and inspect all space stations, equipment, and vehicles stationed on the moon or other celestial bodies, as long as the state party gives prior notice and does not interfere with the safety or operations at these sites.

### A2 Moon Agreement:

The Moon Agreement is not only about the moon, but it also provides legal guidance for other celestial bodies. It is worth mentioning here some features of the agreement with reference to our hypothesis that these instruments and their legal obligations do not encompass private outer-space business authorities. Article VI of the Moon Agreement explicitly grants states the right to collect samples of celestial minerals and other substances for any scientific purpose. Article VII obligates state parties to protect the environment of the moon and other celestial bodies (Mitchell 2018). Even in just these two regulatory obligations, one wonders what this means for private space actors with business and commercial intent. What rules apply when they collect samples for research leading to commercial purposes or what if they in some way pollute the environment of the moon and other celestial bodies?

Article III of the Moon Agreement mandates that the use of the moon should be for 'peaceful purposes' only (Wickramatunga 2015). It also prohibits the use of force, hostile acts, the

establishment of military bases or placement of nuclear weapons in orbit around the Moon or other celestial bodies. Article VIII says that state parties can carry out their research and exploration activities anywhere on or below the moon's surface. To this end, states are allowed to land space objects on the moon and place personnel, space vehicles, facilities, stations, and installations freely on its surface or in moon orbit (Wickramatunga 2015). It further states that space stations must also be placed in a way that they do not hamper the other nations' right to explore.

Article XI, states that the Moon should be considered as a 'common heritage of mankind' (Wickramatunga 2015). It calls for the establishment of an international regime to govern exploitation of the Moon's resources in an equitable manner. This article became highly controversial because its reference to common heritage was associated with an attempt to spread socialism into space (the fear of the cold war era) (Mitchell 2018). In short, the language of the Moon Agreement is vague, and the provisions are too general, which can be interpreted any way that any party wishes, and it does not specify what impact equitable sharing/common heritage will have on private for-profit companies. Therefore, the Moon Agreement has been largely rejected, with only 17 countries having ratified it, and these are not even major spacefaring nations.

#### *B. Domestic Laws of States & Further Developments with Regard to Private/Commercial Outer-space Corporations:*

On the level of state and domestic law, there have been some governance arrangements with regard to private outer-space entities. However, they are more 'right giving' in nature than governing and regulating these private business entities. In this regard, the U.S. and Luxembourg have gained the status of countries rushing to commercialization of space resources. The United States, as one of the most advanced spacefaring states, has established a body of domestic law that is somewhat inclusive of private entities. The first space-related law promulgated in the United States led to the creation of the National Aeronautics and Space Administration, NASA, in 1958 (Mitchell 2018). However, it was not until 1984, that the US Congress addressed commercialisation for the first time by passing the National Space Launch Act, which mandates licensure for private U.S. entities that intend to launch vehicles into space (See, Federal Aviation Department 2021).

It is also interesting to see that most of the laws relating to space (besides the Space Launch Act) addressed the growing business of near-earth satellites. Continuing in this vein, the former President Obama signed into law the Spurring Private Aerospace Competitiveness and Entrepreneurship Act ('SPACE Act') (Mitchell 2018). The SPACE Act expands the existing body of national space law and includes private commercialization. It basically facilitates the development of a commercial space industry by encouraging private sector investment and creating more stable and predictable regulatory conditions. The two most important legal provisions that the SPACE Act brings into space law are adding reusable launch vehicles to licensing rules, and adding an additional category of persons to existing law, i.e., 'space flight participants', in anticipation of space tourism as witnessed in Jeff Bezos's tourism flight into Low Earth Orbit (LEO) (Mitchell 2018, p. 438; Luscombe 2021).

However, the SPACE Act also includes a clause that contradicts the Outer-Space Treaty, in that, though it prohibits extra-terrestrial sovereignty over celestial bodies, it explicitly allows property rights over extracted minerals to any U.S. citizen (which means any private entity) who harvests them (Mitchell 2018).

What does this mean for other spacefaring nations and, more importantly, for other private outer-space entities? Will there not be confusion, as outer-space exploration and even commercialisation is a trans-national area of common interest? Does it not call for an international authority – which by extension means governance and regulation – to include and recognise these new private entities as business authorities in global governance? This is important because, apparently, the private sector is just starting to take over and dominate commercial space activities: where it goes from here can get complicated, speaking from governance, regulation, and human rights perspectives.

Some of the recent developments indicate this concern, notably the examples of SpaceX and Blue Origin, the private and business-oriented space companies of the world's top two billionaires.

#### **4.9.3 How does the Case Study of Private Outer-space Companies Expose the Problematic Character of Authority in Global Governance?**

At the end of the case study, I take up the discussion of how the technological advancement, new developments, and growing commercial interest from the private sector in the field of

outer-space relate to the problem of international authority (which in my study broadly refers to the problematic characteristic of authority's conceptual framework in global governance). The purpose of including a case study on the commercialization of outer-space resources is to address my two core hypotheses.

First, as against the traditional understanding of authority, where it is identified as the exercise of powers to create formal obligations and habitual obedience patterns, I argue that authority can also take more flexible and informal forms and can be characterized by a lower degree of consolidation and significant dynamism under the concept of liquid authority. It can be generated beyond the formally established traditional structures of authority, like space governance, spurred by a multiplicity of actors and governance tools. But given the state-centric global governance structures one misses these actors to be included in the analysis of authority.

Second, my case study on private space companies tries to provide an understanding of authority led by private actors. This addresses my second hypothesis, that there are new and multiple authorities on the rise, which hold on to their private identity but function in public spheres and are not encompassed by the existing contractual solid authority framework, based on a simple public and private authority constellation.

The above detailed and interesting study of private commercial entities and their ambitious plans show that these are already the leading non-state authorities in the field, which cannot merely be termed private entities, for they are first of all private business authorities performing public functions, or taking a lead in an area of cross-national public interest, due to which they cannot be neatly classified as either private or public authorities. This addresses another hypothesis, i.e., that authorities have developed over time, and with the multiplication of authorities it is necessary to look beyond the public-private divide.

Third, this case study also manifests that with increasing space commercialisation activities, mainly led by private companies in the area of mining, space tourism, and space cargo/re-supply services to the ISS, there is an equally increasing tension between the spacefaring nations, like the US's authorization of space mining and the latter's obligations under the international space treaties.



This aspect of my case study addresses another related hypothesis, i.e., that the existing models of authority in governance studies are pre-defined, fixed, and state-centric, which results in their failure to capture fully the multitude of new authorities, their nature, functions, and grounds of legitimation, beyond the Westphalian paradigms of regulation and public-private divide. It is for this reason that this case study shows that there appears to be a contradiction between the United States' authorization of space mining and its obligations under the Outer-space Treaty. More generally, it also shows that international authority or governance relating to space activities is still state-centric and fails to encompass private space entities in terms of both regulation and accountability. This fact is evident from the liability of the U.S. government for acts by its private companies in space.

In the above section on the legal background of outer-space governance, the commercial uses of outer-space by corporations were nowhere addressed in the first international legal instrument on outer-space governance. Likewise, the presence of private actors in the use of outer-space appears to be equally absent from the scope of the Outer-Space Treaty, the first binding document and the backbone of international space law (United Nations 2002).

As a result, the role of private space companies has not been accorded any regulatory attention in outer-space governance, because these resolutions and treaties attending to the use of outer-space emerged amidst the Cold War with a highly reactive nature, responding predominantly only to states' responsibility/obligation to make the use of outer-space resources for peaceful and scientific advancement purposes. Some scholars on the lack of regulation of private and commercial space activities go as far as characterising the Outer-Space Treaty as a 'relic' of the Cold War (Mitchell 2018, p. 451), without the capacity to respond to the needs of private space actors. Consequently, the Outer-Space Treaty is not only deemed unable to meet the demands of modern global governance relating to the uses of outer-space, but it is also insufficient to stand up to new developments of space activities and thus to the increased interest and engagement of private space business corporations. Therefore, international authority or governance structure, from the very early stages of development of international space law, has been confined to Westphalian paradigms of outer-space regulation and failed to encompass both the commercialisation of outer-space and the role and responsibility of private space actors.

There is no denying that outer-space resource exploration and mining could one day become a significant resource for life on Earth, once the technology to achieve it is effectively developed, and realistically it seems from the above discussion that we are not far from it. However, with this there also appear some legal and governance challenges, which are further aggravated by the existing outdated, narrow, and state-centric global governance structures. There are two such challenges: first, the controversy over mining of space resources and private property rights; second, the impracticality of state liability for private space entities.

#### *A. Mining of Space Resources & Private Property Rights:*

The matter of private ownership of space minerals is controversial on two levels. First, the private ownership of space minerals contradicts international space treaties. Second, even the interpretation of private ownership of space minerals appears to be problematic, meaning it is unclear how to define private ownership of space minerals, how it does not contradict the Outer-Space Treaty's 'non-appropriation' clause, and how it does not result in the violation of the rights of other parties and nations, such as the right to visit any manmade installations or equipment in space. It has long been agreed between countries, some legal scholars argue, that outer space is not to become another Wild West, and the new law risks privatising a realm that is meant to belong to all of humanity (Morrison 2021).

The existing legal instruments on space activities are no stranger to such controversies. In the very beginning, even the Outer-Space Treaty's provision that the use of outer space be for peaceful purposes was controversial and became the subject of international dispute between the U.S. and the Soviet Union, when the two disagreed about the interpretation of what constitutes 'peaceful purposes' (Mitchell 2018). The U.S. wanted to define 'peaceful purposes' in a way that did not prevent the use of military personnel or equipment for scientific research or any other peaceful purpose. The U.S., attempting to make the Antarctic Treaty's clause of non-prevention of the use of military personnel and equipment the basis of its argument, tried to justify that 'peaceful purposes' does not necessarily mean nonmilitary. The Soviet Union, however, opposed it, consistently stated that reconnaissance missions through the deployment of military-grade spy satellites, were actually military operations and thus could not be deemed peaceful and were, in fact, illegal under the treaty.

Similarly, Article II of the Outer-space Treaty now faces legal controversy because of the pro- and anti-space-mining discourse. Legal scholars have difficulty agreeing if space mining is lawful under the treaty. Some argue that the SPACE Act – legislation signed by the former U.S. President Obama – which also provides a framework for space companies to mine ore from asteroids and other bodies can lead to violation of international law because the 1967 Outer-Space Treaty's Article II prohibits any commercialized harvesting of space resources (CBC News 2015).

The non-appropriation clause is criticised by those who are in favour of mining rights, and they argue that the prohibition on appropriation is just to bar states exercising sovereign claims over the space resources, which means private appropriation is permitted or private entities are exempted from this obligation. In this regard, some have even made proposals to view 'harvesting as an enterprise right rather than a property right' (Mitchell 2018, p. 444). Enterprise rights provide entitlements to private entities to operate in an unowned and unclaimed space and to collect and use the resources gained. This argument of enterprise rights, according to them, does not contradict the Outer-Space Treaty's principle of non-appropriation, which exclusively bars the occupation of a location by states and makes the commercialisation of space fair by preventing monopolies of desirable areas and resources.

They further argue that this mode of commercial ventures is already being followed in other areas, as in offshore oil platforms and artificial space objects like satellites, which are already deployed in space under this kind of arrangement. States that register orbital positions in the geostationary orbit to launch and operate their space objects are also currently exercising enterprise rights.

However, despite all these arguments in favour of private mining and property rights, either in terms of enterprise rights or actual property rights, can one really believe that this will not lead to global inter-state disputes and violation of other parties' rights of exploration, with overlapping claims leading to military actions? As seen above from the ambitious plans of certain companies, commercialisation is becoming an unstoppable train headed towards space mining. They are already making routine, for-profit use of limited space resources by launching satellites into low orbit, and especially into high-up geostationary orbits, and now also starting space tourism.

Therefore, it is more a matter of how to include them as new global authorities by broadening the international authority conceptual framework, as well as by extending direct global governance responsibility and regulation to them rather than via states. There is no legal instrument or global governance mechanism with regard to recognising private mining expeditions and property rights. Even if a state merely recognised the real property claims of private entities, the enforcement of exclusivity would violate the treaty's right of parties to visit manmade installations or equipment in space. Untangling and enforcing overlapping claims could also result in military action in case of disputes among the private entities of different nations.

Likewise, the exploration of space would also be at risk if areas of space were exclusively private properties. The owner could then deny all others from utilizing the area, regardless of whether the intended activity was commercial, exploratory, or scientific and instead auction off the rights to visit and use to whoever could pay the most (Mitchell 2018). One such recent example is Jeff Bezos auctioning seats to other fellow billionaires on his private spacecraft for a suborbital flight into space. Therefore, if mining of space resources, private property rights or enterprise rights are somehow accepted, the question of governance, regulation, and global responsibility or accountability remains.

#### *B. State Liability for Private Space Companies: Blurring the Lines between Public and Private Authorities:*

Another major factor for global governance and, in our case, international authority being geared towards the state in solid and command-and-obedience arrangements is the state-centric nature of global governance structures, where new and multiple authorities like Outer-space private companies are overlooked. For instance, in the Outer-Space Treaty, Article VI both obligates private entities to be authorized and supervised by the state and makes the state liable for any damage caused by any private entities that are citizens of the state. In this sense, any activity carried out in space, whether by the state itself or by a private actor, is considered national. It is because of such aspects that some scholars also talk about the blurring of lines between public and private authorities and, as in my study, the need to look beyond the public-private authority constellation is emphasised.

This creates two problems which may not be quite adaptable to modern global governance structures, especially given technological advancement and the rise of private actors. First,

activities undertaken by non-governmental entities, which by extension includes business corporations, directly qualify as national space activities, giving them both public and private identity. Secondly, states that are party to the Treaty shall bear the responsibility for activities in outer space, which somewhat exempts outer-space resource exploration business corporations from any direct normative or governance responsibility. Therefore, despite the fact that non-governmental entities – by extension, private corporations – are important actors in outer-space global governance, whose power and functional capacity might outgrow that of states, their legitimacy and functions are confined to the obligations of states and the businesses themselves are exempt from any direct global governance obligation.

This peculiar, state-centric responsibility or governance arrangement in the case of outer-space activities cannot be attributed to the failure to foresee the rise of these new private entities in the area; the engagement of private space entities in the use and exploration of outer space was, indeed, foreseen and discussed, rather than ignored, in Article VI of the Outer-Space Treaty, which appears to be a compromise between the US and the then USSR as to the role and responsibilities of private space actors. While the US was of the opinion that the text of the Treaty should clarify that space activities can be undertaken by private actors and states alike, the USSR insisted that space activities should be carried out solely by States (Jakhu and Freeland 2016, p. 8).

The difference was resolved through the intervention of the United Kingdom,<sup>13</sup> which proposed the compromise provisions of Article VI of the Outer-Space Treaty, which ultimately allowed private entities to participate in space activities, but attributed responsibility for their actions to the State (United Nations 2002, p. 5). Therefore, my study's hypothesis of understanding authority in global governance beyond the Westphalian paradigms and the public-private authority constellation, addresses this very question: when private entities in the governance of outer-space activities were foreseen and discussed, then why is the governance of outer-space then and now state-centric, and why was the role of these new or multiple authorities (referring to business/private authorities) confined to state obligations?

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<sup>13</sup> *Letter dated 4 December 1962 from the Permanent Representative of the UK to the UN addressed to the Chairman of the First Committee*, UN Doc A/C.1/879 (12 October 1962) at 4

In my study, rethinking international authority beyond the limits of the contractual and state model in such cases involves reimagining global governance comprising of multiple actors and authorities and not just merely of states and their delegated authorities within public-private confines. Rethinking space governance beyond Westphalian paradigms and beyond the limits of contractual international space law means rethinking public- and private-space actors as global governance-making and norm-inventing actors.

Moreover, these international legal instruments on space activities, be it the Outer-Space Treaty or even the Liability Convention of 1972, do not provide any clear-cut mechanism of insurance or indemnification at the national level. Rather, state parties have leverage for interpreting and determining on their own how to implement these vague obligations. Moreover, these treaties seem to provide only half-measures in case of liability, because they only provide for state action in respect of personal injuries, which means if a space traveller suffers injuries, they cannot on their own claim damages against the responsible state (Mitchell 2018).

This is a typical example of a state-centric global governance structure, which stands in the way of making sense of new and multiple authorities in the global governance literature. The liability or lack of global measures for personal injury to space tourists is deemed to be a matter of domestic contract law or state regulation. Unfortunately, the result of such an arrangement is that each nation will have its own regulations and laws, and therefore uncertainty will exist.

In the U.S., private companies which are given launch licenses must also take on liability insurance as a matter of national law, and these liability insurances, which aim to cover both the private personnel and the government personnel associated with the company or launch, are imposed by the U.S. government with different upper limits. 'For third parties the limit is set at \$500 million and for government losses this limit is \$100 million and for claims that exceed the insurance limits, the U.S. government will pay the difference up to \$1.5 billion' (Mitchell 2018, p. 446).

The Netherlands, on the other hand, requires the launch license to have a maximum amount of liability insurance for their space activities and in Sweden, the law requires that the government must be reimbursed in case of any payment of damages it is required to make.

In the face of rising interest in space tourism and commercialization globally, and since these space activities in any shape are carried out with a cross-section of earthly nationalities, it is crucial to develop international governance that provides certainty and uniformity with regard to all space activities. With the existing space regime, private companies have no incentive to provide favourable terms to space tourists, so a potential regime should consider the need to both govern globally and incentivise space companies, while also protecting consumer rights.

Commercialisation of space until recently had been slow, but now with technological advancements and a significant reduction in the expense of space launches, private companies are rapidly getting on board this fast-running train of opportunity. No doubt, the utilisation of space resources is not only important for commercial gains but also for exploration, discovery, and further advancements in the area. Using space resources could further reduce the cost of space tourism and make possible colonisation of space more affordable. For instance, what if instead of sending just one sixteen-ounce bottle of water to space for \$9100, water on the Moon or asteroids could be utilised? That is only possible if there is regulated and thoughtful mining of space resources. Currently, the global space regime and law are ill-equipped to handle these new challenges, which are more likely to be posed by private commercial companies with ambitious plans for tapping and using space resources.

As noted earlier, the current international space governance is not tailored either to the needs and interests of modern, private space actors nor does it adequately cover their functions, legitimations, and impacts. Private space resource exploration corporations currently occupy a key place in the global space economy, one of the world's fastest growing economic sectors. They cannot be merely law-abiding actors but rather law-making and norm-making actors in global governance, with both rights and obligations.

A characteristic example of this power is the United States' *Executive Order on Encouraging International Support for the Recovery and Use of Space Resources*, which denounces the nature of outer-space as a global commons and recognises that the prohibition of appropriation of parts of outer-space – and, consequently the prohibition on mining space resources – 'has discouraged some commercial entities from participating in this enterprise' (Christensen and Johnson 2020). This executive order, which reflects the interests of private space actors and appears to doubt principles of international space law, such as the non-appropriation

principle, reveals one more aspect of the role of private space corporations in global space governance: their norm-making power and their ability to instigate domestic legislative measures to regulate space activities in contradiction of international law. This not only highlights the connection of global governance with the pluralisation or multiplication of authorities in global governance, but it also reaffirms their role as part of modern international authority in global space governance; as per the definition, international authority must have the ability to rule and govern oneself and others and engage in developing, interpreting, and implementing norms and laws. This case study shows that outer-space private companies as new authorities in global governance are playing their part in this regard.

The increasing and significant engagement of private space resource exploration corporations in the governance of outer space brings to light two major shortfalls of global governance. First, it shows that the international legal instruments on the uses of outer space have remained stagnant since the 1980s, when the last international space law agreement was concluded.<sup>14</sup> Second, this case study clearly supports my study's hypothesis that international authority, and on a broader level, global governance structures are too state-centric, failing to take into account the new authorities and actors in global governance. It highlights the missing pieces in the analysis of international authority, while making sense of these new and multiple authorities at play in global governance.

In the global space regime, the Moon Agreement is the youngest of international space treaties, written in 1979. After that, no major treaty on space has been developed in nearly four decades, despite the increasing capacity of not only other nations but also of private companies to launch objects into space. This raises a global concern over exploitation of space resources because the Outer-Space Treaty makes no mention of the regulation for preventing the exploitation of space resources, although the Moon Agreement vaguely obligates state parties to attempt to create an international regulatory scheme for exploitation when 'such exploitation is about to become feasible' (Wickramatunga 2015). Most importantly, the Moon Agreement does not ban the use of Moon resources, because it declares that the moon's resources are the 'common heritage of mankind' (Wickramatunga 2015), which further

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<sup>14</sup> The Moon Agreement UNOOSA <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html>



establishes our case for the need of a more robust and modern regulator or governance scheme at the global level.

Regardless of whether states have ratified these legal instruments, there is a need for an international regulatory scheme, where not only are these activities regulated and governed but these private entities are also recognised as new authorities on the global landscape, with a need to have global responsibilities. This is essential for resolving disputes that are likely to emerge in the future as private companies become more engaged in their ambitious plans for space commercialisation; the existing lack of a global regulatory scheme could create a new wild west in outer-space.

Furthermore, a global legal regime of such a kind could also address other related concerns. As Mitchell (2018) says, this could help in likely future issues, such as ‘protecting the environment, creating space traffic rules, and achieving humanitarian goals like creating an economic assistance fund to help poor countries whose livelihood depends on exporting minerals that [in the future scenario] are now being imported en masse from space’ (Mitchell 2018, p. 448). The current state of global governance towards space activities is simply not equipped to handle expansion on a large scale and therefore nations need to look at broadening global governance structures, updating existing legal instruments, and formulating global policies beyond the state-centric and solid authority conceptions, with multiple authorities on board. Rachel Mitchell (2018) has rightly pointed out that the existing conceptual framework of international authority or governance is problematic. According to her:

Rather than looking at the past to regulate the future, imagination may be prudent. After all, the United Nations still reflects a Cold War structure, which many believe needs reform to address the problems of today. A new space-oriented body, free of the confines of the United Nations, could offer flexibility and new ideas that the machinery of an old, Cold War relic cannot. (Mitchell 2018, p. 451).

#### **4.10 State-centric Global Governance: A Case Study of Big Tech Companies and Data Capitalism, a Governance Problem:**

The aim in this case study is to empirically address my hypothesis that there are multiple authorities on the rise on the global landscape, which go beyond not only the contractual and state model of authorities but also the public-private authority constellation. They hold on to

their private identity but perform critical public-interest functions without sharing the expected global responsibilities and accountability for them. Therefore, based on this understanding here in the case of big tech companies, I argue that our current global governance structures and legal instruments are too state-centric, due to which business corporations and big tech companies neither share global responsibilities nor face any legal or normative accountability. This aspect of global governance shows that new authorities are not even accounted for in global responsibilities and accountability, let alone being considered as new authorities with public functions. This indirectly substantiates my study's hypothesis that the existing conceptual framework of authority fails to make sense of these new authorities so that they can be given space alongside traditional, state-delegated, political authorities on the global governance landscape.

The rapidly increasing dependence on technologies in our lives and the commercial tech companies overpowering people through data on one hand and their growing involvement in public governance on the other hand have robbed the people of the ability to opt out of engaging with technology firms. In the face of this reality, where people have lost the right to disengage with commercial technologies, we might need to hold these big tech companies accountable to the same standards to which we hold the public sector and state, or state-delegated authorities in global governance.

To justify the above statement, one could argue that the economic might and social footprint of the big tech companies across the globe has, for some time now, been compared to that of states and their political power is rising to match (Taylor 2021). Moreover, their technological power has become an indispensable aspect of states' functional ability to govern, as states depend more and more on technology in areas like e-governance, emergency responses, national security, border control, education, communication, health services, law enforcement and many other areas of public needs and interest (Zuiderwijk et al. 2021).

This mixing of private with public or the takeover of public functions by private tech companies has bestowed immense political power on the private sector. However, on the other hand, the existing political tools and global governance instruments with regard to their regulation and accountability are either still state-centric, with no bearing on the private sector, or they have no legal or political bite when it comes to keeping this kind of power in check.

One of the obvious reasons for not being able to extend global responsibilities and accountability mechanism to these private entities, which perform numerous public functions, is the Westphalian paradigm of responsibility and accountability, which leads to a narrow, solid understanding of authority in global governance, confined to the two-pole public and private authority constellation. However, by arguing that it is difficult to neatly classify these new authorities, with immense political power, into a strict public and private constellation, I do not mean that the lines between public and private authorities or between state and non-state actors are blurring or should be blurred. Rather, it is argued that in order to make sense of these new authorities, one has to go beyond the Westphalian paradigm of responsibilities, or more specifically, beyond the two-pole public and private authority constellation, which provides this traditional, positivist legal perspective on responsibilities, where states have obligations to protect while businesses merely have responsibility to respect the global common good and its associated responsibilities. This becomes a governance problem when these businesses and big tech companies, while sticking to their private identity, start performing indispensable public functions.

According to Taylor (2021) the governance problems resulting from the growing power and domination of technological companies can be typologized as follows. First, this governance impasse occurs due to contracting or outsourcing of services to the private sector. When business corporations acquire a technical capacity that is complementary to that of state services, then they become incorporated as contractors in those services, while still holding onto their private-sector identity and the leverage of not being legally obligated to international rules or other global responsibilities. All they have is the non-judicial and non-binding negative responsibility of merely respecting these obligations and responsibilities.

Second, the governance problem occurs due to mass engagement with technologies. These tech companies, due to their unique services, gain direct mass influence and leverage over public attention and engagement independently of government through people's engagement with their services. This mass engagement, in practice, makes them public service providers, because their platforms or services can be used to access particular populations for political, economic, and social purposes. The most recent and worldwide example of this is the API (Application Programming Interface) service developed by Google and Apple to provide contact tracing during the Covid-19 pandemic. These two big tech companies enjoy a

monopoly on smartphone operating systems, which gave them the leverage to offer data about the location of, and contacts between, almost all of the world's smart phone users to anyone building an app for that purpose.

Another example of this problem is the excessive use of social media for political news amongst US adults, which gives the algorithms of social media firms like Facebook controlling and censorship power over issues people become aware of and how they are presented (Taylor 2021). Such power over people and the use of data shows tech companies' domination and arbitrariness. It is not only that these companies have the ability to act arbitrarily on a mass scale, but they create markets for data and profiles that empower others to act arbitrarily as well. The most recent such example is the malware named Pegasus, used to conduct cyber surveillance, which has been sold by an Israeli surveillance company to authoritarian governments who want to spy on journalists, activists, politicians, and government officials (Editorial 2021). The software can infiltrate smartphones, enabling the operator to record calls, retrieve photos, messages, and emails without the knowledge of the phone user. Although the company claims that it sells its software to those who intend to use it against terrorists and criminals, a massive leak shows that its clients have used it against targets which fall into neither of those categories (Editorial 2021).

Spyware like Pegasus is an example of a cyberattack on one's fundamental rights because it facilitates human rights violations, especially in the hands of an authoritarian regime. To regulate and monitor the misuse of such software and its falling into the wrong hands, there is no legal or governance tool at hand. All that is there to counter it is for governments to pressure global rights bodies to monitor countries and businesses that develop and sell this software. Alternatively, some regional and national governance institutions like the Toronto Declaration may attempt to force them to meet human rights standards, but this again is a state-centric, non-judicial tool, the widespread sale of the software can be restricted until the companies concerned can demonstrate that they can respect human rights and limit the abuse of their software. Again, it is a classic example of a negative responsibility to merely respect human rights, with no legal accountability mechanism in case of violation, as has been seen in the case of Pegasus spyware.

A third type of governance problem arises when governments allow or invite a technology company to operate in the public space but refuse to regulate their activities. The best

example of this is the UK government, which in 2019 agreed to give Amazon access to National Health Service (NHS) data for the use of Amazon's Alexa devices to offer expert health advice to users in order to take the pressure off the hardworking health workers and pharmacists. This agreement allowed Amazon to monetize copyright NHS content, data and materials by using them to create new products and services and to share information with third parties who may also monetize them, but the NHS receives no compensation and has no control over the use of its data by Amazon (Taylor 2021).

These private entities with immense political power and public functions are categorized as transnational hybrid authorities in my study (refer to Figure 1), but are also referred to as new authorities in global governance. These new hybrid authorities result from commercial investment in developing a public capacity, which leads to a monopoly not only on data about core public services or entitlements but also on the very public service that it provides. In fact, by using the data, the company gains sole proprietary rights, which further enables them to develop new products, offer new and unique public services, and capture new markets. This results in more government contracts and thus more public functions.

These governance problems, as well as the problem of the conceptual understanding of authorities in global governance cannot be remedied under the contractual solid authority conception with just simple and neat classification of public and private actors and values. In the case of business and big tech companies and their human rights responsibilities, this raises questions of exploitation, power, and escape from legal obligation and accountability on a global level. So far, responses to human rights protection and data and informational capitalism as a governance problem have been seen in the form of data protection and the still-developing field of data ethics. These are important but not good enough to problematise and interrogate the political status quo of informational capitalism and the human rights violations committed by these companies. Instead, theories of domination have been used to analyse state, rather than corporate, behaviour as a threat to freedom and other fundamental rights (Laborde and Ronzoni 2016).

#### **4.10.1 What is Missing from the Current Regulatory Perspective on Data?**

Public-private overlapping raises a question on the current regulatory and accountability mechanism towards big tech companies. With the rise in digital platforms and data capitalism,

states have become more and more reliant on private sector data to see, monitor, or even control their population for health, law, security, and some other social purposes. As a result, the private sector is systematically taking over public-interest tasks that were traditionally in the state purview. This shifting and reshuffling of tasks with regard to digital data has not only legal and governance implications but also political and social ramifications in the face of the failure of existing accountability systems to adapt to the changes in authority structures in global governance.

Linnet Taylor (2021, p. 4), in her paper, distinguishes between the 'public sector' – a functional definition denoting actors and institutions whose activities take place primarily under the auspices of government - and the 'public sphere' – where public functions are performed and matters of public concern are dealt with. It matters how big tech companies engage with public-sector systems, as well as how they perform public functions in the public sphere, because for formal legal reasons, the private and public sectors are subject to different kinds of responsibility, regulatory and accountability systems. Therefore, where hybrid governance arrangements come into being, there also comes a need not only to broaden the conceptual understanding of authority structures in global governance but also to re-order the responsibility and accountability mechanism in order to make sense of these hybrid authorities and subject them to a direct regulatory and accountability system.

States may become comfortable with the hybrid arrangements, but then public scrutiny usually hangs in the balance. The best example of this is the collaboration of Chinese state authorities with mobile network operators during the COVID-19 pandemic in 2020. This resulted in the development of certain social control tools, which instantly became part of the Chinese government's authority structures. Consequently, excessive coronavirus public monitoring and mass surveillance and different apps developed in this regard led to human rights violations committed both by states and by the big tech companies (Kuo 2020).

Establishing legally binding and positive global responsibilities and accountability system for the big tech companies is a challenge. This is partly because of the lack of transparency of the large-scale technical systems of data usage, but also because of the governments' reluctance. Governments usually make an economic argument that private companies should be protected from public scrutiny. For instance, in the case of the NHS-Amazon data sharing deal,

the UK's Department of Health declined to make the deal public on the grounds that it might prejudice the commercial interests of Amazon.

In fact, private intervention in the public sphere or engagement with the public sector is the first step in undermining transparency and contestability. Now, a lack of public transparency is legally normal for business contracts, but this becomes a problem when private companies perform public-interest or specific government tasks. Back in 2018, when the EU called out for migration statistics to contribute to migration policy, it was not well received. A freedom of information request by the EU in 2019 to one of the border-controlling authorities, Frontex, asking for documents relating to Big Data for Migration projects, ended up with a reply from the organisation's Transparency office to the EU that 'Frontex has identified a total of 28 documents. However, access to 27 of those must be refused, as their disclosure would undermine the protection of commercial interests of legal persons ...' (Taylor 2021, p. 6; cf. Access Info Europe 2020)

These claims of protecting commercial interests go against the purpose of 'data protection policy', which, though weak was originally intended as a mechanism for protecting democratic rights and the right to access information, regardless of whether states, private business companies or both were threatening them. There is no doubt on public administration grounds that, when firms sign a contract with the government, then the responsibility and accountability for service provision formally go to the state, but research and empirical observation show that, in practice, this turns out to be a rhetorical rather than an operational claim, since such functions are not very often visible in terms of execution.

#### **4.10.2 Risks Relating to these Tech Companies Taking Over Public Tasks but Staying Outside the Normative and Legal Framework:**

As argued above, public-private overlapping and private hybrid tech companies' interventions in the public sphere or engagement with the public sector are not simply a new permutation of public-private partnerships. Rather, these tech companies (being private entities with public functions) are new authorities which exhibit the potential for being autonomous actors with government like reach and power. This complicates the global authority landscape from both legitimacy and functional perspectives and poses serious risks if the existing conceptual framework of authority in global governance remains state-centric.

First of all, these firms are not designed to function according to a democratic logic to offset inequalities or to defend certain rights. Nor is their regulation fashioned with public scrutiny in mind. They are judged according to different standards from government and public authorities.

Second, they have the power to make democracies fragile, as in the case of the last US Presidential elections, in which we witnessed the ways in which the population can be influenced and manipulated through data. These new authorities, particularly in the tech field, have empowered the private sector at the expense of the state, by establishing independent cryptocurrencies, intervening in electoral politics, determining which migrants should be seen and which should remain invisible, who goes to prison and who stays free, and now very recently in the withdrawal of the US forces and the takeover by the Taliban, also determining who to blame for the Afghan debacle. These powers have ramifications for civil and political rights, because the intervention and non-accountability of big tech companies on the societal level create risks of selective justice and selective pronouncements on humanitarian rights globally.

Third, and most importantly, these tech companies intervene in the public sphere but still stay outside the normative and legal frameworks that check the power of state and state authorities over people. If the technology sector aims to evolve into public sector or state-like functions, this necessitates that they take state-like responsibility and enter into a state-like accountability framework. This becomes possible only when the conceptual framework of authority is broadened enough to include these private entities, as in the form of big tech companies performing public functions, as new authorities in global governance.

No doubt, data protection is usually brought up in the discussion of controlling the power of tech companies, but its reach and efficacy are vulnerable with respect to a new paradigm of big data and Artificial Intelligence (AI). In this new paradigm, what happens to data (after an individual, often unconsciously, generates it) is loose, complex, elusive, and is dealt with on the back end in hidden corporate architectures.

Moreover, the conceptual understanding of data protection is even more generic and elusive because data protection relies heavily on the loose and undefined concept of 'legitimate use of data'. Extending this idea, Europe's GDPR (General Data Protection Regulation) provides the principle of 'legitimate purpose' as if it were self-evident what exactly could be termed



as legitimate and how it could be sourced (Taylor 2021, p. 9). It fails to provide guidance on how to check the criteria for what counts as legitimate and what does not. In the US and other jurisdictions, there is even more confusion on what constitutes legitimacy.

Most probably, that is why the data protection provisions include some that are sector-specific and address people as consumers, rather than citizens. This results in understanding legitimacy in commercial, rather than public, interests. Now, in such a situation, for state governments to claim to take responsibility for tech companies' engagement in the public sphere, without the necessary power to regulate them, would be a rhetorical claim with no practical value. Instead, it is more practical and wiser to create space for these tech companies as new business authorities or transnational hybrid authorities in the global governance structure, by extending direct global responsibility and accountability mechanisms, and pushing the states to create conditions of transparency.

Now, with regard to public authorities' own data use, the GDPR is clear in Art.6 (1) (f) that they must back the basis of their legitimate use with provisions in national law; however, it does not demand this of corporations (Taylor 2021, p. 9). This is because the responsibility for making sure that these tech companies function within the law lies with the state, which means no positive and direct obligations fall on tech companies.

Such an arrangement not only raises questions of the global responsibility and human rights obligations of these authorities, but also on the type of legitimacy of these authorities. For instance, if Amazon starts to take over public healthcare provisions or the insurance market based on its access to public-sector data, it is unclear in the existing legal and normative structure (which is state-centric) whether people should assess the legitimacy of Amazon's authority on the same level as that of government. I mean, from where and under which law would Amazon derive its legitimacy to take over public health?

In a narrow and limited interpretation of legitimacy, private business authorities (firms) are supposed to function within their own expected ambit and not violate the law, as the UK government claims Amazon is doing, for example. However, is this sufficient or is Taylor (2021) right to argue that a thicker concept of legitimacy is needed so that corporations – being new authorities – that acquire the ability to function in the public sphere and affect

public goods and values also become subject to the same kind of legitimacy demands expected of the state?

#### **4.10.3 Artificial Intelligence: Mapping Corporate Responsibility:**

There are equally serious concerns around AI and inadequate corporate responsibility and obligation towards protection of fundamental rights. Interestingly, there is no single agreed AI definition, which poses a challenge to governing AI and human rights. However, AI generally refers to human-like intelligence performed by a computer, robot, or other machine (IBM 2020).

Again, big tech companies, which are private businesses, are actually at the forefront of developing AI in different areas, ranging from criminal justice and health services to other day-to-day public services. No doubt, such a role for private businesses entitles them to ensure that AI respects human rights, laws, data privacy ethics and that the guidelines and principles provided in AI governance instruments do address this role.

However, in international legal instruments, their position remains unclear because of the state-centric approaches. A road to legal accountability and regulation passes through states indirectly to these big tech companies. The UN's top human rights office declared years ago that, in order to respect the right to privacy, governments should regulate how private companies, and not just police and spy agencies, treat personal data. Since human rights treaties only strictly apply to governments and states, there is only a long-established norm that businesses should respect rights even if they are not legally instructed by the states to do so. The same UN body also requested web-based companies to make sure their services and platforms do not facilitate illegal government surveillance or otherwise harm human rights (St. Vincent 2018).

As mentioned above, the existing global governance structure is state-centric, so the framework of international human rights law either failed to envisage the technological advancement or simply referred vaguely to their role with regard to human rights protection. Although the establishment of international standards to protect human rights from private businesses demonstrates progress, critical questions remain regarding the role and responsibilities of big tech companies or businesses developing AI. These questions include: what human rights responsibilities do these tech companies developing AI have under international

human rights law? What standards are used in regulating these companies and are these standards legally backed? What challenges and shortcomings exist in this regard and how can one ensure that AI respects human rights? The best-known instances of AI infringing upon human rights come from AI privacy violations, like the UK government letting Amazon use NHS data to develop Alexa for health advice, or the facial recognition feature in some gadgets.

The international human rights law framework concerning AI is even more limited than it is with regard to other businesses, like outer-space companies; there are no sources of international human rights law that clearly address AI, apart from some exceptional authoritative interpretations of human rights treaties that address the responsibilities of businesses. At the time of drafting, as in the case of other private businesses, these international legal instruments mainly focused on the role and obligations of states in respecting, protecting, and fulfilling human rights. As a result, the particular conduct expected of businesses developing or using AI has not been sufficiently stipulated.

There are certain AI governance initiatives adopted by a range of actors at the international, regional, and national levels by states, intergovernmental organisations, non-governmental organisations, business enterprises, independent expert groups, watchdogs, and national ethics commissions. However, many of these initiatives take a nonbinding ethics rather than a human rights approach. Some such initiatives include: the Toronto Declaration protecting the right to equality and non-discrimination in machine-learning systems, a joint initiative by Access Now and Amnesty International adopted in 2018 (Access Now 2018), and the European Commission's draft 'Artificial Intelligence Act' of April 2021, towards the protection of fundamental rights. These and some other AI governance instruments provide guidance as to the conduct of businesses developing AI in order to ensure ethical or human rights compliant AI. Therefore, it is safe to conclude that the international human rights law and governance structure do not clearly articulate the human rights responsibilities of these big tech business companies, while some governance initiatives at different levels merely provide guidance in this respect.

#### **4.10.4 The Question of Tech Corporations' Legitimacy**

In previous sections on the legitimacy of authorities in global governance, the discussion mostly revolved around political philosophy perspectives of legitimacy, which focuses on

either the relations between states and their citizens or between global governance institutions and states and people. The legitimacy question relating to new authorities in the case of big tech companies and private military and security companies, has so far been answered only by business ethics, where their good conduct, respect for human rights, transparency, and fairness are deemed to be the sources of legitimacy.

Such a basis of legitimacy results in empirical legitimacy, where corporations define their own criteria of legitimacy and escape the normative legitimacy framework. This trend of companies determining for themselves the values they will uphold, independently of the public, started in 2000 with the rise of globalisation. There are two common categories of corporate legitimacy. In the first, the firm is deemed normatively legitimate if people approve of its business model and practices. However, that depends if the people are fully aware of them. In the second category, a firm can be considered empirically legitimate if it is popularly accepted as such. Again, the important factor here is that people are fully aware of the firm's day to day operational manners. Critiques warn that empirical legitimacy may depend on some information being kept hidden, or in the worst case, misrepresented so that people can be manipulated.

Such loose concepts of legitimacy are unfulfilling, because the ways in which tech companies monetize data and conduct their business are hidden from the public or made too complicated to understand. To make personal choices based on personal autonomy and liberty, people need understandable and clear information on the overall business model they are engaging with. This necessitates a wider and thicker concept of legitimacy against which to test companies' authority functions. Although some of these tech companies have gained enormous power over public, the classical theories on legitimacy are still of limited use here, because they usually deal with coercive political authority, and this may not be the most befitting framework when dealing with the authority of the private sector. Nevertheless, these firms may be seen as claiming a passive kind of political legitimacy, where they may engage with tasks that have traditionally been in the purview of states, and still shielding themselves from public scrutiny by sticking to their private sector identity.

What sounds more practical here is to form a thick version of legitimacy around some specific type of functions of these tech companies, which include: first, categorizing citizens for purposes of population-level intervention; second, functions or activities of the firms that have

large-scale impacts on fundamental rights and liberties, such as social media platforms (Facebook, Twitter, Instagram), which have the power to decide which information should go online and which should be taken off; and finally, paying attention to firms accessing data that is collected by government, as in the areas of public health and security.

As discussed in the literature review section, debates on the nature of legitimacy appear in two forms. One is the Weberian/contractual concept based on the notion of effective authority, where an actor is deemed legitimate if people accept its authority and agree they should obey its commands (Weber 1978). Alternatively, an actor may be considered legitimate if its power is understood by people as justified (Raz 2006). Raz (2006) further argues that people may obey an authority for one of two reasons: either because they have effective authority or because their authority is based on legitimacy and need not be tested.

In the first case, the authority might face disagreement and resistance, but in the second case it is unlikely to refuse or disobey. This brief repetition of the distinction between the two types of authority was needed here in understanding private authorities exercising in the public sphere and answering what kind of authority is being exercised and obeyed. For instance, what can we make of Facebook, as a political actor claiming legitimate authority to allow or disallow particular kinds of content, or as a business company with merely effective control over users' behaviour? It matters which we choose, because it leads to a different set of actions, the first in the political sphere and the second in the sphere of regulation, as through data protection (Taylor 2021).

However, given the socio-political effects of Facebook, it is unwise to argue and work for the latter, i.e., regulation only. Therefore, it is necessary to see what kind of political effects a corporate is generating. As in the case of privatisation, political effects can be attributed back to the government; if, let's say, a rail provider runs the train late or causes an accident, this will have political repercussions for the government responsible for privatising the railway service, while the firm itself will just face some regulatory blow-back.

Two further categories of morally legitimate political authority come from contractarian philosophy, which distinguishes between 'convention consent', where people may cooperate with an authority despite it being unjust because they do not see any reasonable alternative to it (for instance, an alternative to Facebook or Twitter), and 'endorsement consent', where

people agree with the authority on a moral basis and therefore find cooperation justified (Taylor 2021, p. 12).

The notion of consent and its relationship with authority's legitimacy is instrumental here because of the frequent abuse of the notion of consent in the realm of technology. In relation to tech companies' authority, it is convention consent that one can see, as there is no opting out and states protect the interests of corporations as their own due to their public services. Consent is again a loose criterion for determining the legitimacy of tech companies because, in their case, informed consent is not possible; instead, a hollow consent, which should not be taken as conferring legitimacy but rather may be taken as a sign of domination, is used rampantly by tech companies. Since informed consent is not possible, other criteria for legitimacy must be found.

In the case of humanitarian organisations, there also arises a question of legitimacy of the 'datafied' intervention of these tech companies. With the increasing partnership between humanitarian organisations and tech companies, there is a debate unfolding about whether they are taking refuge behind those organisations' unique privileges and immunities, given that their mission is profit, not humanitarian action. Likewise, there is a question for firms doing the work of government: if their mission does not align with that of government, they cannot borrow the government's legitimacy.

Two evident practices of corporate responsibility currently exist. First, the government has the responsibility to keep the functioning of private companies within the law. However, this action is activated only in case of violations of law on their end, which is again a state-centric, indirect, negative responsibility arrangement. Second, consumer choices regulate firms by abandoning their services because of their negative effects on society or fundamental rights violations. But in this case, if people are using, say, any digital platform voluntarily, then they are not consumers, rather just part of the affected population, which places a different kind of responsibility on the firms not to do harm. However, none of these mechanisms have so far worked in keeping a check on the power of big tech companies.

The governance challenges relating to big tech companies arise from the problem of international authority, which refers to the problematic characteristics of the conceptual framework

of authority, the solid and contractual understanding of authority, and the traditional two-pole public-private authority constellation.

#### **4.11 Global Human Rights Responsibilities, Going Beyond the Westphalian Paradigm of Human Rights Protection: A Case Study of Private Military Security Companies (PMSCs)**

Despite the rise of new and multiple authorities infringing upon human rights, our global human rights regime is still very much state-centric. To justify this claim, my study in this chapter makes use of a thematic study of private military security companies (PMSCs), with the aim of going beyond the Westphalian paradigm of human rights protection. This case study, like the two previous case studies, is also set to address my study's fundamental argument with regard to the problem of international authority, that the conceptual framework of authority is problematic. This aspect becomes evident, in particular, when one tries to place such private transnational hybrid authorities on a par with states and other public authorities on the global responsibility and accountability spectrum. This is because, despite lacking a legal personality, they still perform public-interest functions.

The best point to start this argument is to analyse how their 'produced standard instruments' for exercising international public authority affect others and reduce their freedom in the face of an already state-centric public international law and human rights regime. In public international law, the narrative of the state being responsible and accountable for global human rights protection, people's freedom, civil rights and other fundamental rights is a rhetorical and theoretical claim with no practical value.

This chapter, in line with my study's research problem and hypotheses, discusses state-centric global governance and the limitations of human rights responsibilities beyond the state in the case of PMSCs. The question that is raised here is, does the existing human rights framework – the state's 'duty to protect' and corporations' 'responsibility to respect' human rights – adequately address the human rights violations and challenges that arise in implementing human rights responsibilities globally on multi-nation companies (MNCs)?

In this chapter, I argue that there is a huge gap between the growing powers of corporations and the limited human rights responsibilities placed on them in the contemporary state-centric framework (cf. Ronen 2013, p. 24). Under international human rights law, states and public entities are responsible and obligated to respect, protect, and fulfil human rights.

Corporations, however, are exempted from any direct or indirect human rights obligations in an actual 'positive responsibility' sense of respecting, protecting, and fulfilling human rights.

Since states are not the only ones infringing upon human dignity or human rights, a problem arises with the nature and scope of international authority and human rights law, which speak of the entitlement of everyone to such rights but do not impose legal obligations on actors beyond states, like PMSCs. Thus, in the face of such limitations on human rights responsibilities beyond the state, corporations have, at best, moral responsibility based on societal expectations, rather than legal duty based on binding obligations under human rights law.

In the words of Deva and Bilchitz (2013), corporations have and emphasize 'negative responsibility', which means responsibility to merely respect human rights and try not to violate them, but they take no active part in protecting and assisting in the realisation of human rights. Furthermore, there is also no legally binding regulation and accountability mechanism in place. This chapter attempts to highlight the claim of new authorities in global governance which are private in nature but perform public functions or state-like functions. However, the conceptual framework of authority fails to treat them as authorities which need to share global responsibilities and obligations with states and state-delegated authorities on an equal footing.

In this vein, I argue that global human rights responsibilities with regard to private authorities exercising international public authority must extend beyond the 'negative responsibility' of merely respecting and not violating human rights to a more legally binding, 'positive responsibility' like that of state and public authorities for assisting in the realization and fulfilment of human rights obligations. Here, I try to present the case for a direct mechanism of human rights obligations and legal accountability for PMSCs as business authorities which are liable to be subjected to positive human rights responsibilities. The aim is to contribute to new models of human rights responsibilities, which go beyond the Westphalian paradigm of human rights protection.

I will conclude the case study with empirical observations that, in our globalized world, the international human rights regime, which mainly functions indirectly through states as its major regulating agencies, is not adapting to the growing power of corporations as new authorities with public functions. Corporations surely require legal human rights obligations and not



just responsibilities to respect. They must also be held accountable under a direct accountability mechanism based on judicial remedies, rather than on non-judicial grievance mechanisms established by the companies themselves. This confinement to the Westphalian paradigm of human rights protection in global governance is caused by the contractual and solid conception of authority in global governance.

Private military and security companies providing state-like security and military services cannot be made sense of either in the existing contractual solid authority conceptual framework or in the strict two-pole public and private authority constellation and legal frameworks of global governance, because the international system is still predominantly state-oriented and international law still primarily refers to states. Now, the fundamental research question addressed in this case study of PMSCs as new authorities in global governance is that, since private security and/or military companies are in fact being used in state/public-like functions, how can one make sense of this new hybrid form of authorities? Further, how can the issues of control, accountability, and human rights responsibilities be addressed?

Arming private companies and enabling them to perform state-like functions raises fundamental questions on the conceptual understanding of authority and leads to the problem of transparency, control of the means of violence, and the accountability of armed private actors, as their acts can have serious and deadly effects on third parties (cf. Cottier 2006).

This case study and its empirical findings will also seek to support my study's two central hypotheses. First, there are new authorities on the horizon in global governance, which go beyond the contractual solid authority understanding and the traditional two-pole public-private authority constellation. Second, the conceptual understanding of authority in global governance is still very state-centric, narrow, and thus problematic, which makes it difficult to understand these new non-traditional authorities. The case study of PMSCs provides empirical support to my study's argument that, 'authority in global governance is also generated by actors (such as PMSCs) beyond the formally and legally established structures of authority'.

The use of private military and security companies (PMSCs) has grown significantly, not only in conflict and war-like zones, but also on the national level in border management and refugee crises, as in Europe (Davitti 2019). PMSCs are private business enterprises, which offer security and military services to international organisations, NGOs, and most of all to states.

Their services range from active on-ground or clandestine combat support in conflict and war zones, transport and logistic solutions, security and military hardware, surveillance equipment, training and instruction, to protection of persons and property and border security.

Since private military and security companies are usually contracted by states for transnational security and military assignments, this raises many legitimization, policy-related, legal issues. First, PMSCs are private by domain, yet they perform state functions in the area of security and military services, which makes it difficult to neatly classify them in the existing two-pole public-private authority constellation. Second, by holding on to their private identity and still performing state/public functions, they escape any legally binding obligation and accountability, because they are not regulated through hard law.

In fact, there are no directly binding special treaties or conventions that regulate and hold PMSCs accountable. There are very few states like the US, which have established national laws for regulating the conduct of PMSCs, but most depend purely on contract compliance and no domestic laws are applicable to their conduct abroad in conflict zones due to legal and jurisdictional issues.

In contrast, for the regulation of states and their operatives, such as soldiers and active military forces, there exist global legal instruments like international humanitarian law, international criminal law, and human rights. They all apply exclusively to states' conduct and states are held accountable for their wrongdoings and violations of human rights. There is no legal mechanism applicable on an equal footing directly to PMSCs, and the absence of applicable law leads to a situation where it is difficult to make sense of PMSCs as authorities on the rise in global governance and to hold them accountable for their wrongdoings.

The major reasons for the rising use of PMSCs are tactical, economic, and political. First, states employ PMSCs because they are not national armed forces, which means they can be contracted without going through established institutions like parliaments and international bodies, whose decisions are consensus- or majority-voting-based and which are usually on public record. Second, employing PMSCs instead of one's own national armed forces exempts states to some extent from national and global justification, as they are not publicly owned. Third, by using PMSCs, states circumvent responsibility, obligation, and accountability for their

conduct in conflict areas, battlefields, or human-rights-critical fields like refugees and border management.

Does this mean that PMSCs do not have any direct legal and binding obligations? Yes, because when it comes to security and military activities, the international legal instruments are all predominantly geared towards states and their conduct. However, theoretically, this does not mean that PMSCs can violate any national or international laws and norms with impunity, because international law at least establishes some obligations and accountability mechanism on states hiring PMSCs, called 'contracting/exporting countries' (Cottier 2006, p. 639). States hiring PMSCs for operations abroad are obligated to respect international legal obligations and they cannot simply escape them by outsourcing activities. They are responsible for violations of international law, and particularly human rights and international humanitarian law, committed by PMSCs. Both the 'territorial states' where these companies operate as well as the 'exporting states' from where these companies are exported are obligated to prevent, punish, investigate, or redress human rights violations and breaches of the Geneva Conventions by taking appropriate measures or exercising due diligence.

However, in reality, the key actors in the private military and security industry and important players in the arena of global politics who use PMSCs, like the US, UK, and some other western countries, use power dynamics to unhook themselves from direct responsibility for the conduct of PMSCs abroad. They manage to do so by steering the regulation and accountability discourse to self-regulation, monitoring, and self-designed grievances and compliance structure. Therefore, whenever there is a discussion on the direct accountability and responsibility of PMSCs, the discourse of self-regulation dominates and steers away the concerns from hard law applicable to them to mere non-binding, self-regulating measures, and instruments.

There are, therefore, regional instruments, global initiatives, certification norms and individual mechanisms. The regional and state instruments are not many; in fact, only a very few countries have adopted regulations specifically concerning the use and export of PMSCs. In the case of the USA, there is a set of regulations governing the licensing of the export of defence services and the International Transfer of Arms Regulations (ITAR), which regulates the USA's export of armed services (Cottier 2006, p. 653).

The US exporting regime has been considered the most structured in facilitating allies with more acceptance of using PMSCs to deliver services previously provided by the US itself. On a regional level, following the American legislation on the export of armed services, EU is the best example. The European Parliament's Committee on Foreign Affairs has also proposed that the EU Parliament should adopt a resolution calling for the EU to consider extending the EU's code of conduct on Arms Export to cover certain private and military security services.

[The European Parliament] [n]otes that the United States has extended its legislation on the control of military exports to cover private security companies, and therefore calls for the EU to consider similar steps to extend the 1998 EU Code of Conduct so that it covers private security services; as a first step the EU could add to the Common Military List the following activities and services requiring a license for export: armed personnel and site protection, armed transport security, military weapons and equipment training, strategic and tactical training, security sector reform, military and security consultancy, military logistics, counter-intelligence services and operational support. (Cottier 2006, p. 654)

Other than a sensible regulation and governance of PMSCs, an outright ban on the export of military services is a very broad subject and can raise definitional difficulties. Such a step, in the first place, could deprive weak and needy populations of needed support and could also deprive defence exporters of legitimate business, because military services are sometimes an essential part of export sales of military goods. It is for this reason that one sees selective prohibitions internationally; for example, several states prohibit the recruitment of foreign armed forces on their territory or prohibit their own nationals from joining or fighting directly on the side of these armed forces. But these prohibitions vary from country to country and are not always applicable; for example, in the wake of the USA's cold war against the USSR in the 1980s, Afghan mujahedeen were recruited in Pakistan, trained by Pakistani military forces, funded by Saudis, and indirectly armed by the US through the Pakistani establishment. Therefore, these prohibitions have applicability issues when it comes to contemporary use of PMSCs.

Some of the International instruments providing prohibitions in this regard are the 1989 UN International Convention against the recruitment, use, financing, and training of mercenaries or the African Union's 1977 Convention for the Elimination of Mercenarism in Africa (Cottier

2006). But again, these prohibitions are very direct and apply only to activities related to mercenarism; they do not set regulations or even standards that apply to the selling or exporting of private military or security services.

Two of the most powerful attempts at regulation in this area, measured by size and popularity, are the Montreux Document and the International Code of Conduct (ICoC) (Private Security Governance Observatory 2021; International Committee of the Red Cross 2015).

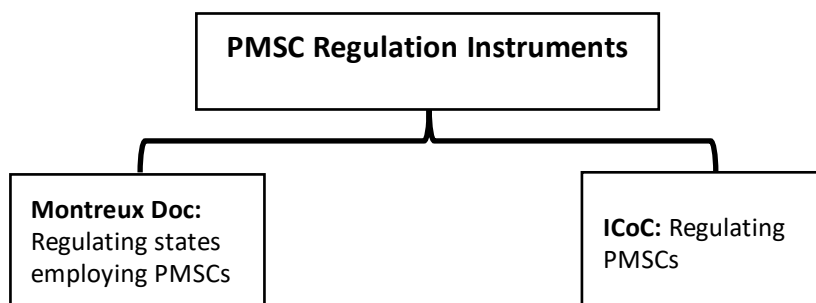


Figure 21: PMSC Regulation Instruments

Apparently, the Montreux Document is considered to regulate states and their conduct when they use PMSCs, while the ICoC applies directly to the conduct of PMSCs. However, both instruments are grounded in the principle of self-regulation and their provisions are not binding because they have no legal backing or obligatory clauses. Therefore, most of the instruments in the field of private military and security companies are ultimately more of a self-commitment exercise than a regulating law.

The effectiveness of the ICoC's claim to regulate PMSCs is further weakened by the lack of adherence to the provisions of oversight and accountability, and this is evident from PMSCs' violation of the provisions of the ICoC despite their self-commitment claims. Although, according to Art. 12 of the Articles of Association (AoA), the ICoC Association (ICoCA), as the governing body of the ICoC, is responsible for the oversight of members and their compliance with the code by employing 'external monitoring, reporting and a process to address alleged violations' (Private Security Governance Observatory 2021), yet the assessment of the performance of these companies is based on public and other available sources, as well as on reports from the companies themselves. According to the provisions of the ICoCA, field-based reviews can be conducted, and the company might even be given a time frame to take corrective measures: a suspension procedure can even be started if they still seem to be unfit. However, none of these things took place in 2020. The implementation and execution of the

oversight process is inadequate and not up to the task, and since there is not enough support for independent oversight, the monitoring procedure also remains vague and ineffective.

On the compliance and grievances front, complaints against PMSCs can be filed by anyone directly on the homepage of the ICoC. If a complaint is found to be legitimate, the secretariat will inform the complainant of fair and accessible grievance procedures that can offer effective remedy, and the secretariat in these proceedings acts as a mediator between the two parties. In case all this fails, 'another identified fair and accessible grievance procedure that may offer effective remedy should be initiated': whatever that means.

This whole compliance and grievance process is theoretical: since 2015, around 900 companies have been members of the ICoCA, and only 13 complaints have been registered, of which none has been accepted as substantial or legitimate. Consequently, there is this new authority in global governance, with state-like power of conducting military operations and providing security, with immense potential for violating human rights, but it has no fear of hard law or binding international instruments of responsibility and accountability. All there is to it is the theoretical provision of self-regulation under the ICoC. The reason for this is the flawed conceptual framework of authority, which omits private actors like PMSCs exercising international public authority beyond formally established authority structures.

Under the Montreux Document and the ICoC, neither PMSCs nor states are held accountable for this outsourced violence. On top of all this, the inclination towards self-regulation of these companies leads to three power shifts.

1. **Escape into Unaccountability:** normally, the relationship between state and individual is one of trust and security. States have responsibility towards individuals for ensuring security and welfare under a social contract, and if this trust is breached and violence takes place, then there is legal accountability for that. However, by privatizing state functions and employing PMSCs to carry out state security or military tasks, which would otherwise be carried out by state armed forces, states manage to escape into unaccountability.
2. **Blurring the Public-Private Divide:** states and PMSCs fall on different sides of the public-private authority constellation. With the increased delegation or takeover of state like authority by private entities without a change in the conceptual, structural, legal

understanding of authority, there is a risk of blurring the public-private divide unreasonably. Therefore, it becomes difficult either to make sense of these new authorities with state-like functions or to hold them accountable on an equal footing with public authorities.

3. **PMSCs and Individuals on the same side of the public-private distinction:** Lastly, a more direct consequence of this power shift arises between PMSCs and the victims of violence. Both entities are private actors, so both have the same authority. However, this balance is tipped in favour of PMSCs when states withdraw from their legislative responsibility. A PMSC can govern with state-like powers and move away from the affected individuals on the public-private spectrum and confusingly get closer to the public end of the divide. This is further intensified by the lack of judicial remedies for the victims.

In this vein, the focus is ultimately given more to strengthening the elements of obligations and regulations while contracting PMSCs (cf. Cottier 2006). Since PMSCs are contractual private entities, the academic argument of specifying obligations by contract, as against the toothless self-regulation discourse, has some appeal, because once it has been decided to offer a company a contract, then the contract is the only direct tool to specify the obligations of the company and its employees, and even to hold it legally accountable in a court of law. As there is no direct international or national legal instrument addressing PMSCs, it makes sense to ideally make the contract the means of a hard law to at least regulate the conduct of these entities. The contract could provide that the company must comply with the laws of the state in which they operate and comply also with international law, including human rights and international humanitarian law. The contract could even specify the human rights and humanitarian law rules applicable to states, by which they should abide and the breach of which could result in legal actions as in the case of states.

Such measures on the contractual level, would fill in the gap of PMSCs performing state-like functions but still not being extended the state or authority-like responsibilities of being bound to obey the same rules and legal obligations and face similar legal consequences in case of breaches. However, since state and other organisations are the contracting parties, it again depends on how much they want these contracted entities to be held responsible for doing their dirty laundry without being directly held accountable for human rights violations.

In other words, if the fundamental idea of contracting PMSCs is to escape responsibility in the first place, then why would any state grant a contract to PMSCs that is again full of legal obligations and accountability and, most of all, can even lead back to state accountability or responsibility under the Montreux Document?

It is evident that self-regulation or accountability indirectly through the state is not only flawed and ineffective but also difficult to fix. It is not just the inadequate substance or the lack of control of the vague grievance procedures of self-regulation. It is self-regulation itself which leads to increased power imbalances. Therefore, the effects of self-regulation cannot be offset with complementary measures. Given the complexity surrounding the use of force and violence in armed conflicts and the secrecy of military operations, it is no less than utopian to hope that the whole industry will adhere to rules and regulations.

The essence of self-regulation or indirect state regulation is that both PMSCs and the states which employ them are profiting from it in terms of deriving legitimacy while escaping legal accountability. In fact, the very existence of self-regulation in the private military and security industry is responsible for the impossibility of establishing hard law. Enforcing any self-regulation or even improving it would further push away the possibility of them being considered as new authorities with direct legal obligation.

#### **4.11.1 PMSCs: The EU Borderescapes and Migration Policies:**

This case study also touches upon the increasing involvement of PMSCs in the EU's external border management/control and its migration policies and practices. The extent and nature of human rights abuses and the violation of international humanitarian laws at the hands of PMSCs implementing EU migration-control policies are well known and have been documented by scholars. However, since the human rights regime and most of the global human rights legal instruments are state centred, there is unfortunately little that has been done on providing justice or legal protection to the victims of PMSCs in the shape of refugees and migrants in border management and control. It still remains an acute challenge because of the jurisdictional hurdles faced by the victims and, moreover, because of the non-state actor or private business actor status of PMSCs, which are not directly obligated by international laws and instruments in the same way as states and other public authorities.



To go a step further in this challenge, these private business actors are also not accounted for their hybrid nature in the conceptual framework of authority to make sense of them as new authorities and to hold them publicly accountable and responsible like states. The reason for this failure is that the existing conceptual framework is flawed and fails to bring into the fold such actors as PMSCs, which generate authority beyond the formally established authority structures by performing public-interest functions. This aspect of the PMSC case study addresses my hypothesis that the conceptual framework of authority in global governance is problematic.

The increased use of PMSCs in border control can be considered a subset of the migration industry. Interestingly, Martin Lemberg Pedersen, in a chapter contribution 'Private Security Companies and the European Borderescapes' in (Gammeltoft-Hansen, Sorensen 2013), explains the term 'Borderescapes', which I believe is strongly instrumental in understanding the increased role of PMSCs in the EU's border management and migration policies. By Borderescapes, he means that the European borders are not static geographical phenomena, but rather they are considered as dynamic and multifaceted sites of interventions for public and private actors. The roles and interests of these actors, the technologies employed, and the control practices at Europe's external borders can be termed processes of borderescaping, which helps in understanding and distinguishing who plays what role and with what impacts.

The concept of Borderescape contracts refers to the role played by PMSCs in these processes. Now, the research problem arises because the increased role of PMSCs in border management and their financial supporters' influence in European border politics presents serious governance, transparency, and humanitarian problems in European Borderescapes.

The best examples of PMSCs' role in Borderescapes – which refers to both controlling borders and influencing EU migration and refugee policies – come from two of the world's largest PMSCs involved in border control, Finmeccanica (an Italian group of defence and security companies) and G4S (a British conglomerate). The UK Border Agency outsourced its border enforcement functions to G4S, likewise Finmeccanica has been engaged in the construction and control of the Libyan border and some other PMSCs are assigned tasks of European external border surveillance (EUROSUR) (Gammeltoft-Hansen, Sorensen 2013).

The issue here is that such outsourcing of public functions and externalization of border management leads to the deployment of advanced technologies, securitisation of the European external borders and ultimately transformation of the border governance and the humanitarian landscape. In fact, the increased involvement of PMSCs without any direct legal obligations and responsibilities has resulted in the militarisation of borders and humanitarian consequences for migrants. Therefore, in refugee and migration research, some are already even considering the civilian rescue NGOs and their efforts in the Mediterranean Sea as a significant `pull factor` for refugees coming to Europe. It is for this reason that their rescue boats are impounded, their activities banned, and Mediterranean states like Malta, Greece and Italy since 2020 have already informally rolled back any of their active rescue services to discourage the refugee influx (Lüdke et al. 2019).

It is not only the increased involvement of PMSCs in public spheres and their ability to perform public functions that makes it necessary to consider them as new authorities on the global landscape, but rather their size, economic might, and transnational operations also make them worthy of being considered private business authorities. Take Finmeccanica, an Italian group that specializes in the space and defence industries. It has 72,000 employees in 72 countries, with an annual turnover of €11 billion. It has several subsidiary companies specializing in different competitive markets, like aeronautics (Alenia Aeronautics), helicopters (Augusta Westland), Space (Thales Alenia Space), defence and security electronics (Selex Sistemi Integrati), defence systems (MBDA), and energy and transportation (Martin Lemberg-Pedersen, p. 154). This shows clearly that Finmeccanica Group is renowned for border control technologies and thus in border control and management contracts it has control and leverage over both demand and supply ends of the business. The more a border is militarised, the further demand is raised for border control and surveillance technologies.

The next world renowned PMSC is G4S. It is a multinational conglomerate which came into being in 2004 after the merger of British Securicor and British-Danish Group 4 Flack (Gammeltoft-Hansen, Sorensen 2013). It is the world's largest PMSC, with around 625,000 employees in over 120 countries, and with an annual turnover of €8 billion (Gammeltoft-Hansen, Sorensen 2013, p. 154). It also has several subsidiary companies specializing in certain fields of the security industry, like defence and protective services. One of its subsidiaries

(Armorgroup Progard Securitas) specializes in prisons and Wackenhut Services provides electronic surveillance equipment.

G4S is famously tasked to control and manage the US-Mexico border, and in UK and Australia, the detention centres. Furthermore, it also provides security services at the Baghdad International and Amsterdam Schiphol Airports. It also provides protection and security services at the Israeli settlements on the West Bank (Gammeltoft-Hansen, Sorensen 2013, p. 154). In 2007, the UK Border Agency contracted G4S for three years to transport and transfer around 85,000 asylum seekers annually between detention and removal facilities in the UK. Furthermore, most of the detention centres in UK have also been outsourced to PMSCs.

Another example of an outsourced border control system is the creation of the EUROSUR (Europe Surveillance) database. The goal of this European border control system is to provide full situational awareness of cross-border mobility through a `common pre-frontier intelligence picture`, gathering information about migrant movement in third countries by using aerial and satellite images (Gammeltoft-Hansen, Sorensen 2013, p. 156). This R&D project was later outsourced to the German conglomerate, ESG, which then subcontracted it to Finmeccanica's subsidiary, French Thales, US-based AGIS and the European conglomerate EADS.

Borderescape contracts, or in other words the outsourcing of border control and management, provide the national governments a chance to distance themselves from the political and human rights controversies around the border control. This outsourcing also means transformation, redefinition, re-territorialisation, and militarisation of borders. But more so, it also means PMSCs as private business companies performing critical public functions are not being considered as new or hybrid authorities in the manner of having global responsibility and state-like accountability in the existing conceptual framework of authority. This is what is referred to in my study as the problem of international authority, which is sticking to the same old traditional, solid, and state-delegated authorities and neglecting the inclusion of these new authorities in the global governance scheme. For instance, the European outsourcing of border functions to PMSCs has resulted in the re-definition and transformation of European borders in a way that directly supports increasingly restrictive migration policies in Europe.

This shows that PMSCs already possess the defining characteristics of an authority in global governance, which is the ability to rule and govern oneself (which it does in the form of self-regulation and its own organisational grievance and remedy mechanism) and others and engage in developing, interpreting, and implementing norms and laws (which it does in the form of influencing EU border and migration policies).

Functionally, PMSCs are already there and acting as new hybrid authorities which go beyond the traditional two pole public and private authority constellation. But since our current conceptual framework of authority is too state-centric and solid command-and-obedience oriented, it fails to take into account these new authorities. This is also the reason why these new authorities, despite performing public functions like border control and refugee checks, have not been subjected to state-like or state-delegated authority-like legal global responsibilities and accountability.

Their engagement in developing, interpreting, implementing or at least influencing the EU border policy is effective to the extent of shifting the whole policy model of border management to a securitisation model on European borders. This shows empirically that PMSCs as new authorities not only try to shape immigration as a security concern but also try to shift the border control and management domain from political choices to state security policy. This is detrimental to the human rights regime, because the securitisation model or discourse generally establishes a threat environment that is conducive to the PMSCs' solutions and business. The border solutions supported or provided by PMSCs rarely appear in public discourse, and yet these solutions and policies have huge ramifications on states' policies towards inclusion, exclusion, and treatment of immigrants at their borders.

One aspect of PMSCs performing public functions in the area of state level security and protection, be it in the case of border control or foreign military assignments, is particularly relevant to my study's hypothesis that the rise of these new actors as private business authorities in publicspheres does not mean less governance; rather, it simply points out the changing landscape of authority in global governance. The case study of PMSCs' engagement in the European borderescape against the self-perceived threat of immigration provides empirical evidence of how PMSCs and their military solutions are introduced into borderescapes and how the state-centred human rights regime fails to address these new authorities.

This whole process of PMSCs entering into public spheres is based on neo-liberalism, which explains private actors intruding in the public sphere. The neoliberal governance, in fact, includes the extension of market relationships to state functions, which means either the privatisation of state assets or, by extension, the outsourcing of services or public subsidies to private actors. These new authority relationships compel us to go beyond the traditional public-private authority constellation in order to make sense of these new authorities, which are private in their identity but perform some typical public authority functions without state- or public authority-like responsibility and accountability for them. Anna Leander also partially points out this aspect:

PMCs can no longer content themselves with being mere technical experts. They become security experts shaping understandings of and decisions about security. The competition for market share pushes PMCs to become lobbyists, security advisers and public opinion-makers ... They create a demand for the services they offer by making clients aware of the many threats they need protection against ... The point is that market logic pushes PMCs to establish themselves not only as providers of security services but as security experts defining which services are needed. (Leander 2005, p. 612)

Besides the outsourcing of European border control services, there is also the issue of externalisation of European migration control, which involves cooperation and deals with third countries which fall in the main transit route for Europe-bound migrants. For instance, Libya during the 2000s was the prime transit route for Europe-bound migrants and the European Council in 2002 pushed for cooperation with Libya to urgently put a stop to illegal migration flows. Following that year, Italy even requested the EU to partially lift its arms embargo on Libya so as to enable Libya to purchase from European companies the necessary equipment for border control under the deal for illegal immigration control. With this amnesty, all the French, British, German, Maltese, and Russian PMSCs made huge gains from the contracts with the Gaddafi regime.

However, as usual, this externalization not only absolved the European states of the responsibility and obligation for humanitarian handling of migrants, but it also shifted control priorities to Libya, and they had a big impact on the socio-geographic character of border control. Therefore, the outsourcing and externalization of European border control to PMSCs come at

the cost of humanitarian and protection-oriented approaches to Europe-bound migration, especially when these PMSCs are not directly held accountable under global legal instruments. The outsourcing of border control to PMSCs always comes with the effect of militarization of borderescapes with serious consequences for migrant rights.

However, the worst outcome of employing PMSCs in border control and management affairs in the absence of any direct and legal obligations and accountability come in the shape of `Lock in Effects` (Gammeltoft-Hansen, Sorensen 2013, p. 159). This simply refers to path dependency or continual reliance of national governments, regional and supranational institutions on PMSCs. The first lock-in effect emerges from path dependency, where governments and supranational institutions outsource the border management or security services to PMSCs through long term contracts. This way, the PMSCs gain unparalleled power as experts in border control and management and, therefore, it usually becomes difficult for the public authorities (both on national and international levels) to roll back this trend of outsourcing public functions.

Furthermore, as a consequence, it becomes seriously difficult to question the methods and ways of PMSCs in managing border affairs, even if they are found to be violating migrants' rights within or beyond Europe. Very often, the decision to outsource security, military, or border control and management services to PMSCs is purely geopolitical and geostrategic and is motivated by a desire to abdicate oneself from human rights responsibilities and escape the blame for any possible political turmoil. In other words, PMSCs are safe havens for states and state-delegated authorities to escape any human rights or other legal backlash.

In the same way the Cayman Islands are tax-free and serve as a tax haven for tax evaders, these new authorities in the global governance landscape are free from global responsibility and accountability and are not included in the global governance scheme in proportion to their public functions and might. For instance, the EU's decision to directly control the refugee influx on Libyan territory – a third country of origin or gateway – through Finmeccanica was inspired not only by abdication of any human rights obligations and accountability but also to avoid geopolitical issues like state conflicts over sovereignty and jurisdiction limitations. The Gaddafi regime's insecurities with regard to Italy's colonial past of Libya's occupation and the public hue and cry over a possible direct placement of European police or military on Libyan

territory could only be offset by the deployment of PMSC Finmeccanica in this extraterritorial European assignment.

Selex Sistemi Integrati S.P.A., a subsidiary of Finmeccanica involved in a border security deal with Libya funded by the EU and Italy, which included the supply of advanced border control technology, is a significant example of large defence contractors being contracted in third countries' border control (Gammeltoft-Hansen, Sorensen 2013). In the face of heavy criticism of the EU and its member states for externalizing the EU border and for outsourcing migration control to North African countries, this deal was nonetheless concluded in an attempt to circumvent their own human rights obligations.

By terming immigration flows a growing security threat to Europe, PMSCs position themselves as the best possible actors to help in these crises by providing technological solutions and by turning governments and EU institutions into insecure audiences. So far, given the actual situation of European borderescapes, the neoliberal governance of insecurity not only seems to have been successful, but also shows how the conceptual framework of authority has been transformed. What one can understand today from the authority landscape is not a diminishment or retreat of the state, nor should one stick to the traditional divide of public-private authority, where the latter is perceived to be private in function and thus weak. Rather, in the words of Thomas Lemke (2005), one should see it as a shift from formal to informal techniques of government and the appearance of new actors on the scene of governance. This addresses my central research problem that there is a need to broaden the conceptual understanding of authority beyond the solid, contractual, command-and-obedience-oriented authority and beyond the traditional public-private authority constellation to include these new authorities in order to make sense of the authority landscape.

In fact, a threat environment with regard to migration influx and thus more militarisation of the EU borders is not solely produced by the private authorities, but rather under the hybrid public-private structures of authority, where each side of the authority constellation (public/private) has specific functions for and effects on the other. 'At the same time, they remain distinct: they do not merge into each other, but retain their own way of working and logic, even though their (internal) content and (external) boundaries may change' (Mende 2020, p. 12).

Therefore, it would be going too far to say that the boundaries between public and private authorities have been blurred, but when it comes to the European borderescapes, one can see the growing role of PMSCs through deliberate processes. The first deliberate process involves the creation of blurred EU forums tasked with presenting the priorities of the EU's Security Research Program (ESRP). The second such process is the increasing cooperation between PMSCs and the Frontex Agency's R&D section. These hybrid structures therefore manifest the ways that public authorities like Frontex and the Commission themselves facilitate the systemic shifts behind the increased militarisation by PMSCs of European borders.

In this vein, the ongoing controversy around the use of drones for border control shows not only the close relationship between Frontex and PMSCs, but also the trick that enabled the hybrid governance of the two with regard to borderescapes to overcome civil society actors' criticism that drones represent a deeply worrying militarisation of EU border control, while the PMSCs argue that drones are necessary to obtain intelligence on migration patterns at the borders.

The way PMSCs' solutions and methods gain legitimacy as public policy options through Frontex could be perceived as blurring the boundaries between private and public authorities. However, I argue that it must be understood on a broader level how these new authorities function on the global governance landscape alongside public authorities and how state- or public-authority-like accountability and obligation can be extended to them so as to avoid human rights violations at their hands and not to let states escape blame and responsibility.



## Chapter 5: Conclusion

The discussion in this study around the concept of authority has successfully attempted to highlight in a scholarly way the research problem that the conceptual framework of authority is problematic, misleading, and narrow when applied to authorities in global governance. As discussed in the critical literature review chapter of the study, mainstream scholarship defines authority as the exercise of power to create formal obligations. However, identifying authority in such a manner runs not only the risk of confusing it with power, but also fails to capture the fact that authority can take more flexible and informal forms and can be characterised by a lower degree of consolidation and dynamism in configuring authority structures.

It also does not recognise that authority can emerge from non-fixed entities beyond the formally established and traditional structures of authority; that is for example, state and state-delegated legal-formal authorities. This leads to a failure to understand and conceptualise authority in global governance, which in my study is referred to as the problem of international authority. In line with the given research problem, my study took on the task of understanding authority beyond contractualism by trying to argue for the scholarly need to reconstruct, redefine, and relocate the concept of authority in modern and more intelligible frameworks in the light of authority's liquid and reflexive characteristics.

The study's aim was not to reform or even to redefine the concept of authority, but rather to adapt it to the changing realities of the global governance landscape, where new authorities are at play which do not fall neatly into the public-private authority divide. Zürn (2018), in this vein, rightly observed that global governance occurs through the authority produced by more than one type of actor, indicating multiplication of authorities beyond public structures and state actors. The nature, functions and legitimation sources of these modern authorities require us to better understand them in a modern, relevant, and more intelligible framework.

The presence of informality and multiplicity in authority structures is made sense of by using the liquid and reflexive concepts of authority. In this regard, I will sum up the discussion on the problem of authority in three controlling arguments of the study, each of which represents a different approach in understanding and reconstructing authority but offers a holistic approach to the study. The first argument represents a historical, second a critical, and the third argument a reformative, innovative, or adaptive approach.

### **1. A Historical Approach: Authority is a Social Fact, Subject to Historical Changes:**

As events developed, so did authority and its grounds of legitimation. Therefore, I argue that authorities have changed, developed, and shifted over time, giving way to new social realities in which the existing conceptual framework of authority, borrowed from the state model, loses relevance and meaning when applied to authorities in global governance.

To empirically address this argument, a historical approach is adopted to understanding and reconstructing authority in the past. An intensive discussion from a historical perspective is presented in Chapter 4 section 4.1, empirically analysing and understanding pre-modern authorities. In that analysis, I have tried to present not only how authority as a concept was perceived and developed but also how past authorities derived their legitimacy from traditional sources and how they functioned.

The purpose is to provide a rationale for the study's argument that a conceptual understanding of authority from the same old traditional perspective is no more valid and relevant when applied to authorities in modern global governance. A detailed summary of the historical perspective of authority is presented below, along with particular research questions concerning authority as a social fact, thus subject to historical changes (refer to section 5.1).

### **2. A Critical Approach: Authority and Global Governance are an Unfitted Pair:**

I argue that authority and global governance are an unfitted pair, because authority in the contractual and state model presumes a vertical and singular relationship. This means that the authority relationship is marked by the centrality of a state and a strict hierarchical relationship between the authority holder and receiver.

Global governance, however, projects a horizontal and multiple-authority relationship, where not only multiple actors claim and exercise authority side by side in horizontal fashion, but the role of state is also diminished. In other words, the typical understanding of authority based on a strict command-and-obedience pattern of rule and governance diminishes in global governance. This results in the multiplication of authorities beyond the state, though these may not have legal personality or command-and-obedience capacity and may not even fall into the traditional public-private divide. Nevertheless, they

perform as an international public authority. This makes global governance a 'loosely coupled sphere of authority', in the words of Zürn (2018).

This basically represents my study's critical approach, which is based on my main argument that the conceptual framework of authority in global governance is problematic. Therefore, my study argues that authority in global governance must be understood beyond the traditional, contractual, solid, command-and-obedience framework and beyond the strict public-private authority constellation. This line of argument can be seen throughout the study, but in particular in Chapter 4 section 4.2.

The conceptual understanding of authority in global governance is problematic and geared more towards traditional solid authorities. A detailed summary of the critical perspective on the conceptual framework of authority is provided below, along with particular research questions concerning the discussion of the problematic characteristic of authority's conceptual framework (refer to section 5.2).

### **3. Innovative Approach: An Equal Shift in Broadening and Adapting the Conceptual Framework did not Occur:**

In line with my first argument that authorities changed and shifted over time, my study argues that an equal shift in broadening and adapting the conceptual framework did not occur. As a result, we usually end up with a flawed and narrow conceptual understanding of authority in global governance. The traditional approaches to authority may provide some theoretical explanatory power concerning solid, state-delegated authorities, but fail to do so when it comes to non-conventional and non-state new authorities. Therefore, I argue that, in order to make sense of authority as a concept in global governance and in particular of new authorities, there is a need for scholarly work to reconstruct, redefine, and relocate authority in modern and more intelligible frameworks, meaning to adapt the conceptual framework. This is because there are new and multiple authorities at play in global governance, which cannot be made sense of in the traditional, command-and-obedience, contractual, solid framework of authority in state imagery.

This is basically an innovative and reformative, sometimes called an adaptive approach, which is employed in my study in reconstructing authority in global governance. Under this approach, the study tried to highlight the research gap that a modern, more

intelligent, and broader conceptual framework is needed in making sense of authorities, in particular of new authorities in global governance.

This line of argument can be seen running throughout the study, specifically in the case studies on multiplication of authorities (4.7, 4.8, 4.10, 4.11) and in Chapter 4 section 4.3, 'Contrasting different models of authority: deference is not the same as obedience and consent and authority not the same as legitimate de jure rule'. To this end, my study made use of an inductive theory development method.

A detailed summary of the innovative and reformative perspective on the conceptual framework and understanding of authority is provided below, along with particular research questions concerning the discussion of how to make sense of new authorities in global governance (refer to section 5.3).

To understand and reconstruct authority beyond contractualism, my study made use of an interpretive comparative historical analysis method and employed a mixed-method approach, making use of the deductive theory-testing and hypothesis-proving approach together with limited use of the inductive theory-development approach. The deductive approach has been helpful in critically looking at the flawed conceptual understanding of authority based on the extension of contractual, legal, delegated frameworks of authority in the state model to authorities on the global governance landscape. Therefore, my study 'beyond contractualism' sets out from the very beginning to look beyond and criticise the traditional, pre-defined, fixed, and established conceptual frameworks, theories, and models of authority.

With the deductive approach, my study presented a case that the conceptual understanding of authority in global governance is flawed and problematic (detailed discussion in Chapter 4 section 4.2). On the other hand, it highlighted mistaken normative beliefs relating to the concept of authority. These mistaken normative beliefs turned out to be philosophically formulated values and principles such as the right to rule, which provide the same old de jure concept of authority (detailed discussion in Chapter 4 section 4.3). Hence, combined, these approaches result not only in the failure to accurately understand the concept of authority in global governance independently from the traditional concept of authority in state imagery, but they also fail to make sense of multiple and new authorities. The philosophical and

normative approaches to authority usually tend to present an ideal concept of authority, which goes more to what an authority should be (a 'project fix' approach), based on values like fairness, rightness, transparency, etc.

With a combined approach involving some limited use of the inductive theory-development approach, my study has tried to contribute to the development of global governance theory. It argues that the conceptual framework of authority must be broadened in order to make sense of authority being generated by actors beyond formal legally established structures, because these are new authorities which are private but perform public functions. The study goes further by including thematic case studies on new authorities to empirically establish how these new authorities can be made more accountable and globally responsible like states and state-delegated authorities.

As the three arguments above are the main and controlling elements of the study, I will briefly summarise below all the subsidiary research questions and hypotheses addressing the research problem in the light of the three main arguments. In the process, I will also point out which research question is addressed directly under each one of the three arguments. In this way, it will be clear which research question with its respective hypothesis is addressed under which argument and where it appears in the study. For the convenience of summarising and readers' understanding, I will cluster those research questions together and summarise those which are addressed under the same broad argument of the study or attend to the same research problem.

### **5.1 Authorities Changed and Developed Over Time: A Historical Approach**

A historical perspective on authority is provided in the study, not to trace the history of authority as a concept, but rather to provide a rationale and reason for (A) arguing that the conceptual framework of authority is problematic and flawed in the face of the rise of new authorities in global governance and (B) proposing to reconstruct and redefine authority in modern and more intelligible and relevant conceptual frameworks.

The grounds for these two aspects are provided by the historical perspective in empirically substantiating that authority as a concept and its workings and grounds of legitimation have, in fact, changed, shifted, and developed over time. However, an equal change and shift in the conceptual framework failed to occur, due to which it is difficult to make scholarly sense of

the changed social realities with the same old conceptual lenses. In this section, I will briefly revisit my study's two correlated research questions, which directly reflect on the debate of authority and its working in the past.

- **RQ 4:** How has authority shifted over time and how is it more consequential, not consequential, or different consequential in dealing with transnational issues, and how can it be made more accountable?

With regard to RQ 4, I argue that in different international social contexts, authority will appear in different ways: it will be based on different sources, it will create a different relationship between the rulers and the ruled, and will give shape to different and, sometimes, even to new international structural and institutional arrangements, which will have different behavioural consequences.

This hypothesis is taken up in Chapter 4 sections 4.1 and 4.4 of the study. This research question is answered in two parts, because it reflects on two different time periods: one, in the past, showing how authority changed and developed over time; two, how new and multiple authorities in modern global governance gain and sustain legitimacy and function, which is a reflection of the production of different standard instruments of exercising authority. They can be binding or non-binding, making these authorities different consequential, as opposed to the binary of consequential or not consequential under a strict public-private-divide framework.

This aspect provides 'procedure-focused understanding', which means elaborating on their actions and 'production of standard instruments' (Bogdandy et al. 2008) for exercising binding or non-binding authority. It also reflects on the external effects which these instruments will produce. This study tries to quash the conceptual misunderstanding with regard to non-state, private, and business authorities being compared in binaries with state delegated formal solid authorities, where the former are considered as non-consequential in affecting subjects' behaviour, whereas the later are understood to be consequential. This is a typical traditional understanding based on the strict public-private constellation of authorities, and does not fully comprehend the empirical realities of global governance.

To broaden this understanding and extend it to new authorities which are non-state authorities but still exercise international public authority alongside those that are state-delegated,

I introduce 'different consequential' as a third variable to the simple binary of 'consequential' and 'not consequential'. The underlying objective of doing so is to quash this narrow understanding that, if authority is private with a non-legal personality, then it has no role in the public sphere and cannot perform a public function or impact others and their freedom.

In other words, this simple and strict categorization of a public and private authority divide, based on their legal and non-legal personality and their capacity to perform public authority functions, often overlooks the different consequential aspect of non-state authorities. For instance, a private ratings NGO, through its ratings influences the consumer and changes their choices towards a product, which can be highly consequential for the producing or manufacturing company because the production company in question is steered indirectly, without coercion or command, to take into account the recommendations and suggestions on the improvement of a product to retain or regain consumers in the face of choices that have changed based on a negative rating by the rating agency.

Therefore, these new authorities with liquid and reflexive features are not necessarily inconsequential; they just employ a different functional mechanism for sustaining political order, without issuing direct rules and commands.

The term 'different consequential' refers to this aspect of authority, where it can very well bring social change and affect others and their freedom without giving an order, a binding command, or using coercion. They exercise authority, which is either objectivised or institutionalised, but cannot be backed with force. Unlike traditional authorities, they are always dynamic and contested (Zürn 2017). It is in light of these new and reflexive authorities that my study raises the question: How has authority shifted over time and how is it more consequential, not consequential, or different consequential in dealing with transnational issues, and how can it be made more accountable?

Against this comparison, the study analyses two major sets of research questions of international authority. First, how consequential, not consequential, or different consequential are international authority structures in dealing with transnational issues? In this regard, the current global governance or international authority structures can be analysed on a broader level, where different and multiple authorities are brought into the picture.

Second, going beyond the contractual, solid command-and-obedience framework of authorities, which sometimes even do not fall neatly into the traditional two-pole public-private authority constellation, this study reframes the central questions: how has authority developed and shifted over time (in comparison with pre-modern authority structures)? And what are the mechanisms through which it can be made more accountable and legitimate?

To this aspect of the research question, my study presents three intensive case studies on big tech companies, outer-space companies, and Private Military Security Companies (PMSCs) as new authorities performing public-interest functions (refer to Chapter 4 sections 4.9, 4.10, and 4.11). The broad argument that runs through these case studies is that they are not recognised as authorities, despite their exercise of international public authority and thus they escape global governance responsibilities and accountability. They impact others and their freedom, but still are not themselves subject to international legal obligations like states and state-delegated authorities, because of their private identity.

This brings me to my correlated causal research problem, state-centric global governance. I argue that these new authorities escape state-like direct global responsibility and accountability because the legal instruments, to this day, are still very much state-centric (for detailed discussion refer to Chapter 4 section 4.9).

The above line of argument leads us to analyse the 'problem of international authority' on the grounds of its legitimation and functional effectiveness problems. In this regard, the case studies selected on new authorities reflect the wide array of production of standard instruments for the exercise of public authority and their different consequential character (refer to Chapter 4 sections 4.7, 4.8).

- **RQ 6:** What kind of world came to an end after modern global governance not only challenged one or another form of authority in different spheres of life but also caused the whole traditional concept of authority to lose its relevance and validity altogether?

This aspect refers to the changed social realities in modern global governance, where the traditional concept of authority based on strict command and obedience and the public-private constellation lost relevance and validity, because authorities in the past, as discussed in detail in Chapter 4 section 4.1 on pre-modern authorities, had two very typical characteristics. First,



the concept of authority in the sense of possessing something more than just military power, in the words of the first Roman Emperor Augustus, was not yet coined and realized. Therefore, traditional authority was not clearly distinguished from power and coercion. This aspect reflects on the claim and functional aspect of past authorities, where seeking obedience through the use of power and coercion were rightful features of authority.

Second, the legitimation of authority in the past was either not to be bothered with, as long as obedience was forthcoming, as in the case of the Roman Empire's rule in foreign lands, or it came from unwritten traditions, customs, and religion. The authorities of the past, like the Roman Empire, were very often based on divine sources of legitimation. In other words, authorities of the past derived their strength and legitimacy from heavenly and divine sources outside of worldly affairs and were tightly knotted with traditions, customs, and the past.

However, with the inception of the modern world, a philosophical and sociological perception developed that modern society faces a crisis of authority. It is in this vein that Hannah Arendt (2017), argued that authority has vanished in the modern world. In contrast, my study argues that traditional authorities vanished with the loss of tradition and the importance of religion in the modern world. In this sense, Hannah Arendt is partially correct, because with the start of modern global governance, traditional authorities, which derived their strength and legitimacy from heavenly and divine sources outside of worldly affairs, lost relevance due to the rise of new authorities with different sources of legitimation and consequentiality.

It is this world of tradition- and religion-based authorities that came to an end with the inception of modern global governance, where they lost relevance, validity and meaning. Ball (1987) is right to argue that authority has not stood still but has been recast into different political forms. In the face of this change and reality, sticking to the same old contractual, solid command-and-obedience framework of authority results in the problematic characteristic of the conceptual understanding of authority in global governance. With the inception of the modern world and changed social realities, the existing models of authority lost meaning, relevance, and credibility in providing explanatory power to authorities in modern global governance.

In order to empirically prove this, my study discussed pre-modern authorities. In this section, my focus was on the distinct ways authority has been asserted and problematised in history. In order to bring sociological inquiry into a dynamic relation with the past and for a historical-logical reconstruction of the problem of authority, this study employed an **interpretive comparative historical analysis method**. This includes looking at the act of claiming authority in the historical dimension of what has been claimed and contested in the past and what was and is meant by it today.

Since authorities in modern global society have grown beyond the traditional and solid contractual frameworks, the study of international authority and its problems of legitimation should likewise be carried beyond the contractual model of formal, legal solid authorities and establish a clear distinction between international authority and domestic modern state authority. A detailed discussion of this is taken up in Chapter 4 sections 4.1, 4.6 and 4.8.

## **5.2 Conceptual Understanding of Authority is Flawed: Critical Approach**

The following five research questions are directly related to the debate of authority's conceptual framework, which I argue is problematic, narrow, and misleading. Each of the research questions summarized below is addressed in a separate section in the main study. Some may have been discussed often in more than one chapter, but they all set out to discuss in varied ways the problematic characteristic of the conceptual framework of authority in global governance. I will here summarise each research question and present the key take-aways from each of them separately. The research questions clustered in this section reflect my study's critical approach to reconstructing authority in line with my main research problem – the conceptual framework of authority is problematic.

- **RQ1:** What is the problem of international authority and how is the conceptual framework of authority problematic?

With regard to RQ 1, I argue that the problem of authority refers to the problematic character of the conceptual framework in which it finds meaning. The problem arises when this framework, scheme, or theory that provides it meaning is outgrown, discredited, overthrown, or loses meaning and sense with the changing social realities in certain contexts, as in global governance (Ball 1987). In other words, its scope is too narrow to encompass the changed social realities, like adapting to the possibility of authority being generated beyond the

formally established structures of authority. In this vein, applying or extending the same old conceptual framework or model onto new social realities will either miss these new authorities all together or result in a flawed understanding of authority in global governance.

The research problem at hand is that the understanding of authority in global governance is dominantly embedded in traditional concepts of authority, driven by Weberian conceptions of the state. To Weber, the very foundation of the state is built on its claim to the legitimate use of force and coercion within a given territory to establish order (Max Weber 1970). It is because of such a contractual command-and-obedience arrangement and claim to the legitimate use of power that most states rely on the 'habitual obedience' of their citizens under their legal codes, with an established and explicit use of physical coercion in case of defiance (cf. Smith 1986).

However, this solid authority based on physically enforced command-and-obedience arrangements, or what Michael Smith (1986) calls the ability to rely upon legitimate authority for habitual obedience, is largely absent in the global governance system. Here, authorities are liquid and reflexive. This means that authorities in global governance are dynamic, do not have a fixed shape and can emerge beyond the traditional and established structures of governance. By 'reflexive' is meant that authority is not eternally given but is constantly reflected on and reviewed, thus making legitimation a process.

These characteristics of authority in global governance make it difficult to explain it under predefined frameworks and within the two-pole public-and private-authority constellation. Now, applying the same old traditional understanding of authority to global governance results in the problem of international authority. The 'problem of international authority' Zürn refers to as the 'deficits of the current global governance system' (Zürn 2018, p. 43). However, either from his global governance theory perspective or specifically from my study of the international authority perspective, 'the problem of international authority' means the conceptual and structural weakness of authority in global governance caused by mechanisms of the multiplication of authorities in global governance, which can neither be made sense of under the traditional, solid command-and-obedience framework nor can they be neatly divided into the typical public-private authority constellation. As a result, one ends up with a partial understanding of the global governance landscape and these unconventional new authorities

escape responsibility and direct accountability in global governance. This research question is discussed in detail in Chapter 4 sections 4.2, 4.8, 4.9 and 4.10 of the study.

- **RQ 2:** Do the existing models of authority in governance studies provide empirically grounded resources with which to identify the changing authority relations in global governance?

RQ 2 examines the efficacy of the existing models of authority in explaining the changing authority relations in global governance. In this regard, I argue that there are new authorities on the global governance landscape which do not fall neatly into the traditional two-pole authority constellation and do not work under the command-and-obedience framework. Here, the case studies on the multiplication of authorities and new authorities which are private but with public functions are useful in proving that they cannot be made sense of under the existing conceptual framework of authority, which is contractual and strictly command-and-obedience oriented. This is because they are private authorities but perform public functions, so they do not fall neatly into the typical public-private constellation of authorities.

This is referred to as the problem of authority in my study, which gets worse when a shift in the conceptual understanding of authority does not occur simultaneously with the changing nature, functions, and sources of authority, as evident from the discussion of pre-modern authority above. This aspect is well discussed in Chapter 4 section 4.3 of the study. Moreover, under the existing traditional conceptual frameworks, even the state-delegated political authorities in global governance, like the UN Security Council, which exhibits legally binding command-and-obedience features cannot be fully understood on empirical grounds. This is because, on empirical grounds, they also show liquid and reflexive characteristics in global governance, which cannot be made sense of in the framework of plain, contractual or delegated authority. This argument is presented in detail in the case study on the UN Security Council and the WHO in Chapter 4 section 4.5.

- **RQ3:** How to define, locate, test, and measure authority in international context, in the face of weak and weakly founded claims of its existence?

RQ 3 is addressed on the premise of my study's two main arguments. The first is that a very narrow and state-centric understanding is drawn of the concept of authority in global governance, confining it to Westphalian paradigms of global governance and the command-and-

obedience framework. Second, most of the scholarship on authority and global governance ignores the fact that the grounds and sources of authority have shifted over time, giving way to multiple and new forms of authorities. Therefore, defining, locating, testing, and measuring authority in global governance on the basis of pre-defined traditional conceptual frameworks would result in the problem of international authority, because there are multiple authorities in global governance with both liquid and solid characteristics; a focus on just the traditional, solid, delegated aspect of authority is partial and misleading.

Such an approach might show that there is no authority, when in reality there is an authority, just not one that is solid and command-oriented. This is the case of rating agencies and business corporations. A traditional analysis may locate authority in one area when, in fact, it is found elsewhere, as in the case of the IMF competing for authority with credit rating agencies, which are informal and private bodies.

It is to highlight this aspect of authority in global governance that my study uses the concept of liquid authority, which allows an understanding that authority can very well emerge from non-fixed, informal structures of governance. Under this research question, the study reaches a significant observation that, in our modern global governance, some new authority-producing mechanisms have emerged which have the capability to intervene and alter the existing formal and state-delegated authority structures or produce new ones.

This fact has been empirically established in the study through the use of case studies on new authorities, which show that global governance is marked by authority produced by more than one type of actor. This aspect proves my argument of the multiplication of authorities beyond public structures and state actors. Therefore, understanding what kind of authorities exist in global governance, where they reside, and how consequential and legitimate they are, are empirical questions, with the possibility of them being more solid in some areas and more reflexive and liquid in others; strong in some issues and weak in others; and in some cases more or less closely linked to states (Krisch 2017). This research question is addressed in chapter 4 sections 4.2, 4.4, and 4.6.

- **RQ 8:** Is international authority based on a vertical or horizontal structure of authority, or both?

Based on RQ 8, It is argued in the study that authority and global governance are an unfitted and incompatible pair, because authority as a concept exhibits a vertical and singular relationship, where the state assumes centrality in a strict hierarchical structure. Such an authority relationship functions in solid and command-and-obedience arrangements, whereas global governance is a horizontal arena with multiple authorities. Here, the authority relationship is horizontal, with multiple authorities functioning and even cooperating side by side. They do not work exclusively with commands, but rather employ different instruments for exercising authority, like requests, suggestions, ratings, and reports based on research and evidence, to generate different consequential behavioural effects.

Therefore, in this study, I have argued that in the modern reflexive conception of authority, it is not a perceived duty to follow the international authority. This is because our present-day international authorities do not exclusively work with 'commands to do X' but also include 'requests to consider Y' (Zürn 2018). In this sense, international authority does not force or punish subjects into compliance, but rather it rationally, indirectly, usually through the use of its expert knowledge and moral integrity tries to bring them around to compliance of international rule.

Across different issue areas, authorities in different capacities (the political authorities: UNSC; the institutionalised epistemic authorities: IAEA; and the NGO-based epistemic authorities: Amnesty International), have different authority functions and rely on different modes of legitimation. In global governance, any member state can deny any obligation to comply with an authority's regulation, but it will nonetheless recognise the authority, just to be part of the global governance structure and not to stand alone from the rest.

The authority relationship in global governance is, rather, based on rational voluntary deference. This means, when states or societal actors accept obligations formulated by trans-national or international organisations that run counter to their state interest without acceptance being forced upon them, we observe rational voluntary deference upholding the global political order.

Deference works only if there is trust and belief in the authority of different national or international entities, or in the domains of culture and public life, and in the modern world, deference has to be earned (Lewis 1849). Therefore, the larger community's backing of the

authority also indirectly compels any individual state to recognise it. The EU, for example, pays fines for its GMO policy – as a sign of deference and acceptance of the WTO’s authority – without feeling obligated to follow WTO guidelines in changing its own production and agricultural policy (Zürn 2017, p. 265).

From the collective standpoint, compliance with authority in global governance is voluntary and non-coerced, but from an individual standpoint, compliance seems to be the only choice. However, despite the clear difference between the traditional command-and-obedience authority in state imagery and international authority based on deference, it is sometimes difficult in practice to conclude whether, in a specific situation, a subordinate acted out of obligation or command with a threat of punishment or out of rational voluntary deference. This does not, however, imply a failure of analysis or operationalisation, but rather it indicates the complicated and deep connection between authority and other forms of power (Lake 2010). This research question is addressed in chapter 4 sections 4.4, 4.5, and 4.6 of the study.

- **RQ 9:** In global governance, does the existing human rights framework – states’ ‘duty to protect’ and corporations’ ‘responsibility to respect’ human rights – adequately address the human rights violations and challenges that arise in implementing the human rights responsibilities of multinational companies (MNCs)?

With regard to RQ 9, I argue that the international human rights regime on a global level is too state-centric, due to which private business authorities neither share global human rights responsibilities nor face any direct legal or normative accountability. This is the result of a flawed conceptual framework of authority, which fails to perceive authority generated beyond the formally established legal and traditional structures of authority. Therefore, the existing legal instruments of global governance are still very much state-centric and do not address these new informal, non-legal, and private actors exercising international public authority. This research question is addressed adequately in chapter 4 sections 4.10 and 4.11, the case studies on big tech companies and other business companies, such as PMSCs.

The aim in these case studies is to empirically attend to the fact that, despite the changing realities of authority structures and the rise of new authorities, global governance and its legal instruments are still confined to Westphalian paradigms. No matter how frequently these new authorities with their non-legal personalities function in public sphere, they are not

subject to similar legal obligations and responsibilities as those extended to states and state-delegated authorities. They hold on to their private identity but perform public-interest-critical functions without sharing the global responsibilities and accountability expected of them.

Therefore, based on this understanding in my case studies, I argue that our current global governance structures and legal instruments are too state-centric, due to which business corporations and big tech companies neither share global responsibilities nor face any legal or normative accountability.

This aspect of global governance shows that new authorities are not even accounted as having global responsibilities and accountability, let alone being considered as authorities with public functions. This indirectly substantiates my study's hypothesis that the existing conceptual framework of authority fails to make sense of these new authorities so that they can be given space alongside traditional, state-delegated, political authorities on the global governance landscape.

In such a situation, state governments claiming to take responsibility for tech companies' engagement in the public sphere without the necessary power to regulate them would be a rhetorical claim with no practical value. Therefore, I argue that, instead, it is more practical and wiser to create space for these tech companies as new business authorities or transnational hybrid authorities in the global governance structure, by extending to them direct mechanisms for global human rights and other responsibility and accountability.

For formal legal reasons, the private and public sectors are subject to different kinds of responsibility, regulatory and accountability systems. Therefore, where hybrid governance arrangements come into being, there also comes a need not only to broaden the conceptual understanding of authority structures in global governance but also to re-order the responsibility and accountability mechanisms in order to make sense of these hybrid authorities and subject them to a direct regulatory and accountability system.

### **5.3 Reimagining Authority Beyond Contractualism: Innovative and Adaptive Approach**

In this section, I will briefly revisit my study's two further research questions, which directly reflect on the debate of an innovative and adaptive approach to the conceptual understanding of authority in global governance beyond contractualism. Using an inductive theory-building approach, and after a critical survey of the problematic characteristics of the conceptual



frameworks of authority, my study theorises a reconstruction of authority in modern, broader, and more intelligible conceptual frameworks.

As argued in the above section, one cannot make sense of authorities in global governance by using the contractual state model authority frameworks: likewise, Mende (2020, p. 3) also argues that the ‘pre-global governance Westphalian theories of public authority cannot simply be transferred from the state to the global level’, especially when scholars already disagree about whether to conceptualize new authorities exercising international public authority as public or private. My study argues for a broader understanding of authorities in global governance; one that goes beyond the solid contractual and command-and-obedience framework to capture the forms and scope of authorities and how they are embedded in the public and private authority constellation.

- **RQ 5:** Is the exercise of authority in itself sufficient to inspire deference and obedience to collectively formulated rules and goals in global governance, thus facilitating desired forms of collective action?

This research question is aimed at reflecting on different relationships of authority. It is answered by unravelling claims to authority. It differentiates between what it means ‘to be an authority’ by virtue of expert knowledge and ‘to be in authority’ by virtue of one’s authoritative position. Both of them theoretically claim authority on different grounds and with different behavioural impact. The debate further goes on to consider the legitimation sources and art of authority claims and at the same time seeks to distinguish authority from power and coercion; I argue that it is not only the exercise of authority which will gain an entity the deference of its subjects. To be in authority by virtue of one’s rightful position of power and ability to bring social change is a concept of authority in the state model, which is a de jure authority arrangement through election or hereditary right.

In this vein, I further argue in detail in Chapter 4 section 4.3 that in an international context, mere de jure grounds for exercising authority are not sufficient to either gain and sustain legitimation or to inspire deference. This is because deference is not the same as obedience and consent, and authority is not the same as legitimate de jure rule. In the traditional understanding of authority, as given by Lake (2010, 2009), authority is characterized by commands issued by an actor which are expected to be obeyed by the subjects regardless of their

legitimacy. However, as argued in my study, a focus on command-and-obedience-oriented authority is too narrow to include new authorities and their patterns of exercising authority and inspiring deference. In this sense, the exercise of authority in itself is not sufficient to inspire deference and obedience, because a focus only on the capacity to exercise authority would create an arrangement of 'to be in authority' and exclude actors who are 'an authority'. A 'being in authority' approach would also apply to actors who are not legitimate, but nonetheless have a position of authority in the governance system.

Understanding, reconstructing, and redefining authority in global governance beyond contractualism requires a considerable degree of innovation in the conceptual framework. In this vein, I argue that different authorities will use different production of standard instruments in order to gain obedience and deference. Traditionally, by definition, authority refers to the binding production of standard instruments, where it 'modifies the legal situation of a different legal subject without its consent' (Bogdandy et al. 2008, p. 1382).

However, this is a very narrow understanding of authority, typically seen in contractual and state imagery. Therefore, my study under the above-mentioned research question argues that the concept of authority needs to be understood on broader lines beyond contractual and state imagery. In the words of Bogdandy et al. (Bogdandy et al. 2008, p. 1381), 'defining the exercise of international public authority requires a considerable conceptual innovation, since the concept of public authority has been coined in light of the state's monopoly of legitimate coercion and sovereign power over individuals'. To make my contribution to the required conceptual innovation, my study goes beyond the contractual, solid command-and-obedience authority in state imagery and includes new authorities which are not legally instituted but still perform critical public-interest functions. This is necessary because the capacity to exercise public authority and inspire deference can also occur through the production of non-binding instruments which condition others' behaviour, as in the case of private authorities with no legal character. Yet, these non-binding instruments are as consequential as the legally binding standard instruments produced by any state-delegated public authority because they can build up pressure on the legal subjects to follow their suggestions, requests, or recommendations in reports and pay attention to their rankings.

If one wants to empirically capture how authority emerges, how it is exercised, how it inspires deference and how it is sustained and is transformed over time, I argue one needs analytical

concepts which focus on the relations between actors, rather than working with pre-defined frameworks or classifications of authorities. In this regard, the need is to investigate the social dynamics that are responsible for transforming or developing authorities and their relations in the light of authority's liquid and reflexive characteristics. For detailed discussion, refer to Chapter 4 sections 4.2 and 4.3 of the study.

- **RQ 7:** How are the grounds of legitimation of these new authorities similar to or different from the workings of legitimacy in the nation-state and other forms of authorities in global governance, either in the past or in the present?

As the focus in my study is on the concept of authority and the exercise of authority, I focus more on the operative and legitimation or legal side of these authorities than on the infrastructure side. RQ 7 and RQ 6 are overlapping and refer to the same argument; therefore, they are taken up in sections on both the historical and innovative reconstruction of authority. As this aspect has already been summed up under RQ 6 above, I will not go into details here.

These new authorities, by which in my study is meant non-state private authorities formed under private law with public functions, wield significant political clout and their acts raise concerns of legitimacy in the absence of binding legal standards to satisfy their expected legitimacy. These are private institutions in the sense of organisational sociology: though they might not have legal personality similar to that of international public organisations, nonetheless, they are actors exercising public authority. It is this aspect that qualifies these private authorities with public-interest functions to be liable by public law on an equal footing with state-delegated authorities (refer to the case studies in Chapter 4 section 4.11). This is because any governance activity that directly affects public goods or acts in a situation where the interests of different social groups have to be dealt with, questions of legality and legitimacy arise and public law comes into effect (Bogdandy et al. 2008, p. 1384).

In my study I try to present that the legitimation sources of authorities in global governance, in particular those of new authorities, are different from those of nation-state and past authorities. Hannah Arendt has also said that concepts - and in our case, authority - have history, so understanding authority from the same old conceptual frameworks as contractualism is often misleading and results in a narrow or even mistaken analysis of authority.

Chapter 4 section 4.1, providing a historical understanding of the concept of authority and its workings as a whole, clearly depicts the traditional sources of legitimation, which disappeared from the modern world with the erosion of the importance of religion. A reflection of such an analysis can be seen in the scholarly works of Hannah Arendt (2017) and John Schaar (1981), who argued that authority has disappeared. No doubt authorities of the past – *auctoritas* – have, indeed, vanished along with the traditional frameworks in which they were located, but this does not mean authority has disappeared from the modern world. Far from having vanished, authority has assumed newer, modern, and alternative forms. It thus requires redefining and relocating in frameworks that are radically different from the one that Arendt presented as authority's original home.

This study argues that the legitimation of authorities in modern global governance is a process, where they are in a constant cycle of gaining and strengthening legitimation. This aspect is addressed under the reflexive concept of authority, where authority finds itself in a process of legitimation, de-legitimation, and re-legitimation.

#### **5.4 Why a Broader Conceptual Framework?**

My study of reimagining authority beyond contractualism argues for a broader conceptual framework to understand authority in global governance: no matter how important social contract theory is for understanding and explaining authority, it still has limitations when it comes to providing explanatory power for authorities in global governance. By considering authority as a social contract arrangement, one runs the obvious risk of missing the reality of modern global governance, which includes authorities exercising international public authority without any contractual command-and-obedience relationship.

For traditional and state authorities, it is fine to describe their functions under the social contract framework. However, authorities in global governance have different legitimation grounds and functions, which go beyond the traditional solid command-and-obedience arrangement in state imagery. Therefore, my study proposes to look beyond contractualism in understanding authority structures, as new authorities in global governance cannot be made sense of in the Westphalian imagery of statehood.

Now more than ever, one needs to apply an authority-based approach to understanding global governance, and for that it is necessary to have a comprehensive conceptual

understanding of authority. This is because, as evident from my debate in the study and case studies, governance by states has moved on the global stage to governance by new authorities. This means authority as legitimate rulemaking has transcended the national boundaries of states into international and transnational institutions.

Most of these institutions lack a direct connection to their publics and are seldom subject to direct accountability. However, they exercise international public authority, where they impact others and their freedom. In my study and in recent literature (Krisch 2017; Mende 2021; Zürn 2018), these are referred to as new authorities. This refers to new developments in governance, where authority is seen to be exercised more and more by actors other than states, and beyond the formally established legal authority structures. Non-state actors are taking on new responsibilities and functions in global governance, which were previously solely the purview of state, or state-delegated authorities.

This makes it complex to distinguish which actors are 'in authority' or 'an authority'. These new authorities range from international and supranational institutions like the UN and the EU, with claims to legitimacy, to transnational non-state actors like business authorities, NGOs and civil society organisations, which lack legal personality but are nonetheless becoming authorities with legitimacy claims of their own.

Since much of the literature focuses on intergovernmental state organisations, my study shifts the focus to broadening and adapting the conceptual framework in order to make sense of these new and multiple authorities in the global governance system. The aim is to challenge the predominant Westphalian paradigm of authority and to make an argument that authority can also exist independently of states and their agents and can be exercised or possessed by a multitude of actors who are independent of state control.

The recent trend of private actors fulfilling public tasks, such as companies providing critical infrastructure in the field of technology (Taylor, 2021), is just one example of authority being exercised by non-state private actors. Recently, global governance has witnessed the rise of different forms of these new authorities. Private actors are increasingly able to perform public functions, influencing the public discourse or even public policies. Therefore, if new actors are emerging in the public sphere, it is only logical to create scholarly space for them to be understood, recognised, and better scrutinised as authorities.

### **5.5 Research Limitations and Tasks for Future Research:**

My study has, to its best ability, tried to highlight the research problem and pave the way for a more authority-based approach in understanding the global governance structure and institutions. However, there are still some aspects of the concept of authority in global governance which need further research, and which could not be taken up together with my research agenda of highlighting the need for reconstructing authority in a modern and more intelligible framework.

The first such limitation, and an area for further research, is mapping the extent of new authorities performing public functions. Since 'new authorities' in my study refers to private authorities with public functions, or authority being generated by actors outside the formally established fixed structures of authority, there is a need to specifically define private actors in global governance, because they are not formally part of the authority or governance framework.

In the main, 'non-state actors' or 'non-governmental actors' are terms used in the existing scholarship, as well as in my study, to define what they are not. This leaves the door open to different interpretations and a limitless range of non-state actors. This broad range is further sub-categorised by differentiating between for-profit (business actors) and non-profit (NGOs, foundations, and civil society groups) entities. But some cannot be categorized neatly as private or public, because their exercise of authority overlaps or is intertwined.

In this regard, my study has used the yardstick of focusing on those actors as new authorities which are private (both business and otherwise, but performing public functions). In my study, taking an innovative and adaptive approach towards the conceptual framework of authority in global governance serves the purpose, but in wider research these new authorities must be properly defined and mapped out in performing public-interest-critical functions.

Secondly, there is a need to specifically research new authorities' relationships to public or state authorities. This aspect has not been accorded sufficient attention in my research or in the existing literature. The only aspect that my study could produce with regard to their relationship was that these new authorities, as experts in their respective fields, are indispensable in providing certain services, as evident from the case study of the big tech companies.

Third, further research is needed on the reconfiguration of governance authorities by using an authority-based approach. This means focusing on the forms of private actors' participation and the kind of production of standard instruments as exercise of authority. Doing so in reference to public authorities' exercise of authority would present a multilevel governance landscape (Mende 2021).

My study successfully highlighted the problematic characteristic of the conceptual framework of authority and provided a rationale for reconstructing authority in modern and more intelligible frameworks in order to make sense of the multiplication of authorities in global governance. The next step in this chain would be to focus on how to initiate a reconfiguration of the authority structure in global governance, which would help in considering these private actors performing public functions as new authorities alongside traditional state-delegated authorities.

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