Global Governance and Communicative Action

by

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Introduction

The debate about global governance and about new modes of governance focusses almost exclusively on the question whether the inclusion of new and mostly private actors can increase both the democratic quality and the problem-solving capacity of institutionalized cooperation in the international system. At the same time, many international organizations and actors – from the United Nations to the European Commission – emphasizes learning processes and policy diffusion as a means to overcome the limitations of “top down” hierarchical steering. Yet, if we conceive of learning and policy diffusion not just as cognitive processes “inside the human brain,” but as inherently social and intersubjective processes, communicative practices quickly become the micro-mechanism by which ideas get diffused and new ways of thinking are being learned. At this point, arguing and reason-giving assume center-stage in the debate about new modes of governance.

This paper discusses arguing and communicative action as a significant tool for non-hierarchical steering modes in global governance. It is based on a logic of action that differs significantly from the both rational choice-based “logic of consequentialism,” and from the “logic of appropriateness” theorized by sociological institutionalism. Arguing constitutes a learning mechanism by which actors acquire new information, evaluate their interests in light of new empirical and moral knowledge, and – most importantly – can reflexively and collectively assess the validity claims of norms and standards of appropriate behavior. As a result, arguing and persuasion constitute tools of “soft steering” that might improve both the legitimacy problems of global governance by providing voice opportunities to various stake-holders and the problem-solving capacity of governance institutions through deliberation.

I proceed in the following step. I begin by defining my understanding of “global governance” and by locating arguing and communicative action within this concept. Some conceptual remarks on what arguing is all about and how to think about it follow. I then discuss how arguing and deliberative processes affect rule-setting and rule-implementation processes in global governance. The paper concludes with some remarks about the relationship between arguing and the legitimacy problematique in global governance.
‘Global Governance’ and the New Modes of Governance Debate

There is quite some confusion in the debate over global governance that needs to be clarified before one can discuss how arguing and communicative action relate to it. The term “governance” has become such a catchword in the social sciences that its content has been used to connote a whole variety of things. In the broadest possible definition, “governance” relates to any form of creating or maintaining political order and providing common goods for a given political community on whatever level. A more narrow view has been promoted by international relations scholars, such as James N. Rosenau and Ernst-Otto Czempiel. Accordingly, “Governance without government” refers to those political arrangements which rely primarily on non-hierarchical forms of steering. In other words, governance is confined to creating political order in the absence of a state with a legitimate monopoly over the use of force and the capacity to authoritatively enforce the law and other rules. Of course, there is no state or world government in the global realm, even though the United Nations Security Council does have limited authority to impose world order and peace. As a result, to the extent that the international system contains rule structures and institutional settings, this constitutes “governance without government” almost by definition.

But why do we need to use the language of ‘governance,’ if we can talk about international institutions, such as International Organizations (IOs) or international regimes? While IOs are inter-state institutions “with a street address,” international regimes are defined as international institutions based on explicit principles, norms, and rules, that is, international legal arrangements agreed upon by national governments. The Nuclear Non-Proliferation regime, the world trade order, the regime to prevent global climate change, or the various human rights treaties all constitute international regimes, i.e. form part of global “governance without government.” These regimes have in common that they are based on voluntary agreements by states and that there is no supreme authority in the international system capable of enforcing these rules. Hence the elaborate schemes to monitor and verify compliance with the rules and regulations of international regimes!

There is one emerging realm of international institutions which is not covered by the language of international inter-state regimes or organizations as commonly used in the international relations literature. The Internet Corporation for Assigned Names and Number (ICANN) regulates the internet, but is a non-governmental institution. Private rating agencies claim authoritative, consensual, and therefore legitimate knowledge about the credit worthiness of companies and even states and, thus, play an enormous role in international financial markets. The UN Global Compact consists of
firms voluntarily agreeing to comply with international human rights and environmental norms. Thus, we observe the emergence of governance structures in international life which are based on private authority, private regimes, or some mix of public and private actors. In particular, there seems to be an increasing number of “public private partnerships” (PPPs) in international life, some which are concerned with international rule-setting, such as the World Commission on Dams. Other PPPs – the Global Compact and other Global Public Policy arrangements, for example – focus on rule implementation or service provision.

In the following, I am not concerned with governance in the general sense of steering and creating political order, but with these ‘new modes of governance’ which are “distinct from the hierarchical control model characterizing the interventionist state. Governance is the type of regulation typical of the cooperative state, where state and non-state actors participate in mixed public/private policy networks.” As a result, ‘new modes of global governance’ would refer to those institutional arrangements beyond the nation-state that are characterized by two features (see figure 1):

- the inclusion of non-state actors, such as firms, private interest groups, or non-governmental organizations (NGOs) in governance arrangements (actor dimension);
- an emphasis on non-hierarchical modes of steering (steering modes).

Graph 1: The Realm of New Modes of Global Governance

<table>
<thead>
<tr>
<th>Actors involved</th>
<th>Public Actors only</th>
<th>Public and Private Actors</th>
<th>Private Actors only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hierarchical:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Top- down;</td>
<td>traditional nation-state;</td>
<td>Contracting out and Out-Sourcing of public functions to private actors</td>
<td>corporate hierarchies</td>
</tr>
<tr>
<td>(Threat of) sanctions</td>
<td>supranational institutions (EU, partly WTO)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Public Actors only</th>
<th>Public and Private Actors</th>
<th>Private Actors only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Hierarchical:</td>
<td></td>
<td>corporatism</td>
<td></td>
</tr>
<tr>
<td>Positive incentives; bargaining; non-manipulative persuasion (learning, arguing etc.)</td>
<td>international regimes</td>
<td>public-private networks and partnerships</td>
<td>private interest government/private regimes</td>
</tr>
<tr>
<td></td>
<td>international organizations</td>
<td>bench-marking</td>
<td>private-private partnerships (NGOs-companies)</td>
</tr>
</tbody>
</table>

(Shaded area = new modes of governance)

While most of the literature on “new modes of governance” is concerned with the actor dimension and, thus, with the inclusion of private actors in global governance, I concentrate on the steering
modes. Modes of political steering concern both rule-setting and rule-implementation processes including ensuring compliance with international norms. In figure 1, hierarchical steering refers to classic statehood in the Weberian or Eastonian sense (politics as the “authoritative allocation of values for a given society”) and connotes the ability of states to enforce the law through sanctions and the threat of force, if need be. In the international system, modes of hierarchical steering are notably absent except, for example, in supranational organizations such as the European Union (EU) where European law constitutes the “law of the land” and, thus, some elements of hierarchy are present.

However, no modern state can rely solely on coercion and hierarchy to enforce the law. The main difference between modern states and global governance is not that non-hierarchical modes of steering do not exist in the former. The main difference is that global governance has to rely solely on non-hierarchical modes of steering in the absence of a world government with a legitimate monopoly over the use of force. As to these non-hierarchical modes of steering, we can further distinguish between two forms which rely on different modes of social action and social control:

1. Non-hierarchical steering can use positive incentives and negative sanctions to entice actors into compliance with norms and rules. The point is to use incentives and sanctions to manipulate the cost-benefit calculations of actors so as to convince them that rule compliance is in their best interest. As to rule-setting, ‘Bargaining’ during which self-interested actors try to hammer out agreements of give-and-take based on fixed identities and interests has to be mentioned here, too. This mode of steering essentially follows a logic of instrumental rationality as theorized by ‘rational choice.’ Actors are seen as egoistic utility maximizers or optimizers who agree to rules, because they are in their own interests. Voluntary compliance follows from self-interested behavior in this case.

2. A second type of non-hierarchical steering focusses on increasing the moral legitimacy of the rules and norms in question. The idea is that actors will comply voluntarily with norms and rules, the more they are convinced of the legitimacy of the rule. The legitimacy of a rule can result from beliefs in the moral validity of the norm itself, but it can also result from beliefs in the validity of the procedure by which the rule had been worked out. Voluntary rule compliance is based on the acceptance of a particular logic of appropriateness. But how do actors come to accept a new logic of appropriateness? They acquire the social knowledge to function appropriately in a given society or they start believing in the moral validity of the norms and rules in question. In either case, the micro-mechanism underlying this type of social steering concerns learning and persuasion.
This second mode of non-hierarchical steering provides the link between theories of communicative action, deliberative democracy, and new forms of global governance. Arguing and persuasion pertain to a logic of social action and interaction which differs substantially from those theorized by rational choice. Let me, therefore, continue with some conceptual clarifications, before I get back to the question how global governance and communicative action are related.

**Arguing and Deliberation: Conceptual Clarifications**

When actors deliberate in settings such as the ones found in multilateral negotiations, they try to figure out in a collective communicative process

- whether their assumptions about the world and about cause-effect relationships in the world are correct (the realm of theoretical discourses), or
- whether norms of appropriate behavior can be justified and which norms apply under given circumstances (the realm of practical or moral discourses).

Arguing implies that actors try to challenge the validity claims inherent in any causal or normative statement and to seek a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action. Argumentative rationality also means that the participants in a discourse are open to be persuaded by the better argument and that relationships of power and social hierarchies recede in the background. Argumentative and deliberative behavior is as goal-oriented as strategic interactions, but the goal is not to attain one's fixed preferences, but to seek a reasoned consensus. Actors' interests, preferences, and the perceptions of the situation are no longer fixed, but subject to discursive challenges. Where argumentative rationality prevails, actors do not seek to maximize or to satisfy their given interests and preferences, but to challenge and to justify the validity claims inherent in them – and are prepared to change their views of the world or even their interests in light of the better argument. In other words, argumentative and discursive processes challenge the truth claims which are inherent in identities, interests, and norms.

Habermas introduces behavior oriented toward reaching a common understanding (verständigungssorientiertes Handeln) as follows: "I speak of communicative actions when the action orientations of the participating actors are not coordinated via egocentric calculations of success, but through acts of understanding. Participants are not primarily oriented toward their own success in communicative action; they pursue their individual goals under the condition that they can co-ordinate their
action plans on the basis of shared definitions of the situation." The goal of such communicative action is to seek a reasoned consensus (Verständigung). In arguing mode, actors try to convince each other to change their causal or principled beliefs in order to reach a reasoned consensus about validity claims. As Müller put it, "once collective actors - states - reach the limits of purely strategic behavior, they know intuitively and by experience that the repertoire for action of all actors - their own and that of their opponents - contains the alternative of action oriented toward common understanding (Verständigungshandeln). This is the decisive difference to the utilitarian paradigm which does not entail this alternative. ... (Actors) also have indicators at their disposal - intuitively and by experience - by which to judge if and when the partner is willing and able to switch from one mode of action to the other. Communicative discourse allows for the test of these criteria." 

Argumentative rationality in the Habermasian sense is based on several pre-conditions. First, argumentative consensus-seeking requires the ability to empathize, i.e., to see things with the eyes of the interaction partner. Second, actors need to share a "common lifeworld" (gemeinsame Lebenswelt), a supply of collective interpretations of the world and of themselves. The "common lifeworld" consists of a shared culture, a common system of norms and rules perceived as legitimate, and the social identity of actors being capable to communicate and to act. The "common lifeworld" provides arguing actors with a repertoire of collective understandings to which they can refer when making truth claims. At the same time, communicative action and its daily practices reproduce the common lifeworld.

Finally, actors need to recognize each other as equals and need to have equal access to the discourse which must also be open to other participants and public in nature. In this sense then, relationships of power, force, and coercion are assumed absent when argumentative consensus is sought. This implies respect for two principles: universal respect as the recognition of all interested parties as participants in the argumentative discourse, and the recognition of equal rights to all participants concerning making an argument or challenging a validity claim.

In sum and following Saretzki, ideal typical arguing as reason-giving can be distinguished analytically from ‘bargaining’ in modal, structural, and procedural terms and in terms of possible observable outcomes. In graph 2, arguing and bargaining are defined as ideal types representing the end points on a continuum. Thus, arguing is a mode of communication in which the mutual assessment of the validity of an argument geared toward reaching a reasoned consensus rather than instructions,
rules, votes, force, manipulation, tradition etc. is crucial for decision-making. Moreover, arguing is a reflexive process that does not take place in distinct sequences. The process of arguing is rather characterized by an exchange of arguments that is based on a common frame of reference that is adjusted in the course of communication.

**Graph 2: Arguing and Bargaining as Modes of Communication**

<table>
<thead>
<tr>
<th>Mode of communication / Characteristics</th>
<th>ARGUING</th>
<th>BARGAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Modal</strong></td>
<td>empirical and normative assertions with validity claims (assessment criteria: empirical proof and consistency or in the case of normative assertions consistency and impartiality); based on: “argumentative power” in the sense of good reasoning</td>
<td>Pragmatic demands with credibility claims (assessment criteria: credibility of speaker); based on: “bargaining power” in the sense of material and ideational resources and exit options</td>
</tr>
<tr>
<td>procedural</td>
<td>Reflexive</td>
<td>Sequential</td>
</tr>
<tr>
<td>possible observable outcome</td>
<td>reasoned consensus, actors submitting to the better argument and changing interests/preferences accordingly</td>
<td>Compromise without change in preferences/interests</td>
</tr>
<tr>
<td>structural</td>
<td>triadic (speaker and listener have to refer to some external authority to make validity claims)</td>
<td>Dyadic (only mutual assessment counts)</td>
</tr>
</tbody>
</table>

As to structural features, arguing can be distinguished from bargaining through its triadic nature (see figure 1). Bargaining actors assess the moves in negotiations solely based on their own utility functions including private information, while validity claims such as the truthfulness of speakers, the truth of empirical assertions, or the rightness of normative claims recede in the background and are irrelevant for the bargaining situation. This is the dyadic nature of bargaining. In contrast, arguing always involves references to a mutually accepted external authority to validate empirical or normative assertions. In international negotiations, such sources of authority (*Berufungsgrundlagen*) can be previously negotiated and agreed-upon treaties, universally held norms, scientific evidence, and other forms of consensual knowledge.
In each case, there are different sources of external authority to which speakers can refer in order to validate their claims. A special case of this kind of triadic situations occurs when speakers argue in front of an audience which serves as adjudicators of the ‘better argument’. In such cases, they do not only refer to some external authority, but the audience itself might become that external authority as part of the reflexive process.

Figure 1: The Triadic Structure of the Process of Arguing

While analytically speaking, arguing and reason-giving as modes of communication have to strictly separated from ‘bargaining’ (see graph 2 above), empirical research demonstrates that arguing and bargaining usually go together in reality. Pure arguing in terms of deliberative and truth-seeking behavior occurs as rarely as pure bargaining in terms of the exchange of demands, threats, and promises, and the like. Rather, pure arguing and pure bargaining represent opposite ends of a continuum whereby most of the actual communicative processes take place somewhere in between. Bargaining actors tend to constantly justify their demands in terms of generally accepted norms as well as consensual knowledge. Arguing actors tend to routinely use reasons in order to persuade others of the validity and the justifiability of their claims. But the ubiquity of arguing in negotiation systems should not be confused with the assertion that, therefore, reason-giving always matters and always influences results. Rather, it leads to slightly shift the focus: Instead of analyzing whether arguing or bargaining modes dominate in various phases of the negotiations, we need to identify the conditions under which arguing leads to changes in actors’ persuasions and, thus, influences the process and outcomes of negotiations. Instead of stipulating whether actors use arguments and reason go justify their action and their interests, we need to focus on the conditions under which arguing and reason-giving actually matters.

A second finding concerns the interaction orientations and motivations of actors involved in arguing and bargaining situations. Some theoretical claims imply that actors engaged in arguing must be motivated toward truth-seeking in order to be able to mutually exchange and challenge validity
claims. Such claims stem from a specific interpretation of the Habermasian theory of communicative action, including a peculiar understanding of the “ideal speech situation.” However, it is empirically impossible to ascertain with any certainty the interaction orientations of actors engaged in arguing and bargaining. At the same time, it is not necessary to make heroic assumptions about truth-seeking actors to find them engaged in argumentative exchanges and reason-giving. In particular circumstances, even instrumentally rational and strategically motivated actors need to engage in a serious dialogue and in reason-giving with their counterparts in order to be able to influence the course and outcome of negotiations. Ritualistic rhetoric that repeats the same arguments over and over again tends to be rather self-defeating behavior (actors retain some veto power, but are unlikely to positively influence the course of the talks). Even actors with initially strategic motivations must engage in the give and take of arguing in order to affect negotiations. They must demonstrate their truthfulness and their open-mindedness to the “better argument”. I have suggested to call this process “argumentative entrapment” for lack of a better term. One can explain this finding on the basis of the above-mentioned triadic structure of arguing as compared to the dyadic structure of bargaining. As a consequence, it is no longer necessary for ascertain the interaction orientations of negotiators in order to claim that arguing influences the course of negotiations. Rather, one should focus on the social and institutional context in which arguing takes place. The question then becomes what type of context conditions are required to enable the triadic structure of arguing to become effective. Take a court room situation, for example: We can safely assume that both state attorneys and defense lawyers are instrumentally motivated in a court room. However, they need to persuade an audience (the judges and/or the jury) by reference to generally acknowledged legal principles and norms. Thus, they must submit to the logic of arguing in order to be able to make their case. The institutional context of a court, thus, guarantees that the triadic nature of arguing can operate.

**Communicative Action and Global Governance**

Having clarified what constitutes communicative action and arguing, I now turn back to the question what a focus on processes of arguing and persuasion adds to the literature on global governance. I see three connections to the discussion surrounding new modes of (global) governance as defined above:

- As to rule-setting processes, arguing and persuasion represent modes of social action by which actors’ preferences and even identities can be challenged and changed *during* social interaction.
• As to rule implementation and compliance, communicative action so defined is crucial for social learning as an important mechanism for socializing actors into new (international) norms and rules.

• Last not least, arguing and persuasion are directly linked to the issue of legitimacy and accountability in global governance, as the literature on deliberative democracy demonstrates. I comment on this point in the conclusions.

Arguing and Rule-Setting

As suggested above, there are two ideal typical ways by which actors can reach voluntary agreements about new norms and rules. Bargaining compromises refers to cooperative agreements through the give and take of negotiations based on fixed interests and preferences. Reasoned consensus refers to the voluntary agreement about norms and rules reached through arguing and persuasion. How do we know a reasoned consensus when we see one? In contrast to a bargaining compromise, actors have to give similar reasons and justifications why they agreed to the consensus. Otherwise, they would not have been persuaded. In reality, though, bargaining sequences and arguing processes usually go together (see above). Most actors justify their preferences on the basis of general principles and norms assuming that these norms are shared by the participants. Thus, they use arguments for instrumental purposes thereby engaging in rhetorical action. Yet, even rhetoric is subject to the triadic structure of arguing. Rhetorical reasons can be challenged by other speakers as purely instrumental as a result of which rhetorical actors need to demonstrate their sincerity in an arguing process. This constitutes what I have called “argumentative entrapment.”

But how do we know that arguing actually mattered in a negotiation process? How do we know that the “power of the better argument” prevailed? The first test concerns whether we can actually read the negotiation outcome off the interests of the actors at the beginning of the processes. If we found “surprises” and some unexpected outcomes, or agreements beyond the lowest common denominator, then something must have happened during the negotiations. At this point, we need to take a closer look at the negotiation process itself. One could map the process by identifying bargaining and arguing speech acts. The second test would then consist of figuring out whether progress in negotiations resulted from typical bargaining tools such as issue linkage, package deals, promises, threats, and the like, and/or whether we can identify elements of reasoned consensus on principles and norms. In sum, figuring out whether processes of persuasion actually mattered leading to
changes in policy preferences or even actors’ interests over outcomes, requires careful process-tracing.

Empirical research demonstrates that arguing and persuasion matters particularly during specific phases of negotiations. First, processes of persuasion are particularly relevant during agenda-setting and pre-negotiations. How do new issues enter the agenda of global governance? Policy and norm entrepreneurs of all kinds usually engage in framing. Frames are persuasive, because they shed new light on old questions, because they resonate with people’s previous beliefs, or because they identify a new problem of international governance. Second, arguing becomes relevant again when crises in bargaining setting have to be overcome. Many negotiation processes break down or reach impasses because actors stick to their fixed preferences leaving no room for compromise. Turning into arguing mode offers a way out of these bargaining blockages because it allows actors to reflect anew about their interests and preferences, to see information in a new light etc.

The more arguing matters in negotiation processes, the more we should also observe that actors with lesser material resources get empowered through the process. While genuine truth-seeking and ideal speech situations are usually absent during international negotiations, institutional settings that allow or even force actors to shift toward reasoning and deliberation, should level the playing field between the materially powerful and the powerless. Assuming that the materially more powerful do not necessarily control the “better arguments,” we should expect materially weaker actors to improve their negotiating position, the more arguing matters in such institutional settings.

Take, for example, trisectoral public policy networks such as the World Commission on Dams or the UN Global Compact in which states, international organizations, private firms, and INGOs cooperate to seek common solutions for various collective action problems. If material bargaining power is all that counts in such settings, we would expect states, IOs, and private firms to prevail in such networks, because they usually command vastly superior material resources over INGOs, knowledge-based epistemic communities, or transnational advocacy networks. The more these trisectoral networks and “public private partnerships” privilege learning processes and the mutual exchange of ideas and knowledge to enhance the problem-solving capacity of global governance, the more arguing and reason-giving should matter. As a result, ideational resources such as the knowledge power of expert communities or the moral authority of INGOs are expected to become increasingly relevant in such trisectoral networks. The Global Compact, for example, is explicitly designed to operate as a learning network that works through processes of arguing and persuasion,
naming and shaming. Firms commit themselves to comply with international human rights and environmental norms, but there is no enforcement mechanism and rather limited monitoring capacity. The idea behind is that compliance is ultimately achieved through peer pressure and persuasion. Whether or not the Global Compact and other global partnerships achieve their goals through learning and arguing alone, remains to be seen. The empirical record so far seems to be mixed at best. We know very little about the particular scope conditions under which learning networks are successful in either rule setting or rule implementation. We also know little about the particular mix of material incentives, on the one hand, and learning opportunities based on arguing mode, on the other, which would achieve the desired outcomes. Experiences with the Global Compact appear to indicate, however, that persuasion alone is not sufficient to induce sustained behavioral change of large corporate actors such as firms, states, or international organizations.

As to the World Commission on Dams, another trisectoral body designed to develop rules for the construction of large dams, it was also set up institutionally so as to maximize arguing and learning. It did produce a policy report, but there is little agreement in the literature and the policy world alike whether it actually achieved its goal of reaching a reasoned consensus that would allow the World Bank to construct a sustainable policy toward large dams without antagonizing either of the various stakeholders.²⁹

In sum, emphasis on arguing, learning, and persuasion holds quite some promise in improving the quality of international negotiation outcomes and with regard to transnational trisectoral public policy networks. Concepts of learning and persuasion have also entered the official language of international organizations and other bodies, such as the United Nations, the World Bank, and even the European Commission.³⁰

Arguing and Compliance

Learning and persuasion not only play a role in multilateral negotiations including private actors for international rule-setting. They also provide a micro mechanism for socializing actors in new rules. One of the main problems of contemporary global governance is to decrease the growing gap between international norm acceptance and recognition, on the one hand, and rule compliance, on the other.³¹ The problem of international governance seems no longer to be a lack of international rules and norms regulating ever more aspects of international life. We live in a strongly regulated and
legalized international system that no longer resembles the anarchic system or a pre-social state of nature, as (neo-) realist thinking wants us to believe. Take international human rights, for example. There is no state in the international system which has not signed and ratified at least one of the international legal human rights instruments and conventions. One simply has to recognize international human rights normas in order to become a “good international citizen” and a recognized member of the international community “in good standing.” Yet, even a brief look at any of the annual reports of Amnesty International or Human Rights Watch reveals that compliance with international human rights norms has not increased simultaneously. Similar findings seem to hold true for international environmental norms. While we can see norm cascades in both issue areas, there seems to be a growing gap between international norm recognition and rule compliance.

The question then becomes how actors can be socialized into sustained compliance with international norms. To put it differently: under what conditions do actors internalize the logic of appropriateness of international norms as a result of which they acquire a “taken for granted” nature and are complied with habitually? Of course, material incentives as well as the threat of sanctions matter a lot in inducing compliance with international norms. Yet, socializing actors into new norms requires more than simply manipulating cost-benefit calculations. Assuming instrumental rationality, one would expect actors to violate costly rules once again if the material incentives and/or the threat of sanctions are removed. Thus, sustained compliance cannot be achieved without some degree of rule internalization.

This is where arguing and persuasion become relevant for socialization processes. Voluntary defection from international rules cannot only be avoided through sanctions and manipulating incentive structures. Rather, one can engage actors – governments and private actors alike – in an arguing process to persuade them of the normative appropriateness of international rules and of the need to accept them as behavioral standards. Voluntary rule compliance would become a matter of persuasion. Our own research on compliance with international human rights norms indicates that arguing and persuasion matter particularly at latter stages in a socialization process. During the early stages of a socialization process, rule-violating governments are usually forced to make concessions on human rights issues through a mix of international social pressure, incentives to comply (e.g. the EU’s conditionality criteria), and the threat of sanctions. Later on and once governments have signed on to international treaties, naming and shaming and, thus, the use of communicative action becomes more important. Moreover, arguing and persuasion matter increasingly.
We observed time and again that governments accused of human rights violations were forced to engage in a dialogue with transnational advocacy groups on the precise applicability of international norms in a given context. Norm-violating governments accepted the norms rhetorically in order to decrease the international and domestic pressures against them. Argumentative concessions were part of a larger picture of tactical concessions. There was no dialogue between norm-violating governments and their critics, but their arguments were directed at various audiences, both in domestic society and abroad. Both sides attempted to win over their audiences, to increase international pressures on norm-violating governments, for example, or to rally one's domestic society around a nationalist discourse. Nevertheless, this process increasingly entrapped norm-violating governments into the triadic structure of arguing developed above.

If norm-violating governments found it necessary to make rhetorical concessions and to cease denying the validity of the human rights norms, this provided a discursive opening for their critics to challenge them further: If you say that you accept human rights, why do you violate them systematically? The usual response was that such violations either did not occur or were marginal developments. The discourse then shifted toward the issue of whether norm violations constituted isolated incidents or were systematic in character. It was no longer a discourse on the validity of the norm, but on the situation on the ground and the interpretation of the law of the land. At the same time, the two sides gradually accepted each other as valid interlocutors. At this point, the public discourse increasingly fulfilled the conditions of an argumentative dialogue as outlined above. First, both sides treated each other as equal participants in the discourse. Second, they started sharing a “common lifeworld” in terms of a mutual acceptance of the underlying norm of human rights. Third, the argumentative consistency of actors irrespective of the audience increased dramatically.

Our evidence showed a process of argumentative "self-entrapment" which starts as rhetorical action and strategic adaptation to external pressures, but ends with argumentative behavior. How can one explain this process? It certainly does not constitute an "ideal speech situation" in the Habermasian sense, since governments rarely enter the process of arguing voluntarily, but are forced into a dialogue by the pressure of fully mobilized domestic and transnational networks. They might also face economic or political sanctions by the international community. Over time, however, the dialogue no longer resembles rhetorical exchanges by which both sides use arguments to justify their given interests and behavior. Even these "forced dialogues" start having all the characteristics of true argumentative exchanges. Both sides accept each other as valid interlocutors, try to establish some common definition of the human rights situation, and to agree on the norms guiding the situation.
Moreover, actors do not simply repeat their arguments in the public discourses, but respond in increasing detail to the points made by their communication partners. What then looks like “argumentative concessions” tends to have real consequences in a public debate and in behavior on the ground. In sum, actors behave as if they were engaged in a true moral discourse. What starts as rhetoric develops its own dynamics and argumentative rationality increasingly takes over. This is precisely what Jürgen Habermas calls communicative rationality in the sense of a counterfactual presupposition of the ideal speech situation and what Jon Elster means when he talks about the “civilizing effects” of public deliberation.38

The evidence from the international human rights area suggests that arguing and persuasion are crucial for socialization processes to insure compliance of actors – whether public or private – with international norms. It is interesting to note in this context that international organizations increasingly use these mechanisms in trisectoral networks to induce, for example, firms to obey international human rights and environmental rules. Many multinational corporations are particularly vulnerable to processes of naming and shaming which can quickly result in consumer boycotts. As a result, they start accepting corporate social responsibilities by committing themselves to comply with various international norms (cf., once again, the Global Compact, and other mechanisms). Yet, while this might initially be a tactical move, the process does not stop here. Advocacy networks and INGOs start monitoring firms behavior and reminding them of their commitments. The arguing and persuasion process gets underway pretty much following the same logic and mechanisms as in the case of human rights networks and norm-violating governments reported above.

The significance of arguing and learning to improve rule compliance has one more implication for global governance. It reminds us that compliance is not an objectively measurable correspondence between a rule and actual behavior, but constitutes an interpretive process.39 As lawyers keep reminding us, compliance involves negotiating over meanings of norms and their applicability in a given social context. Arguing over such legal interpretations provides a means by which actors can reach a reasoned consensus on how to apply an international rule in a domestic setting. The more actors are persuaded about the applicability of the rule in a given context, the more they will comply voluntarily. At this point, the discussion about arguing as a mode of global governance is directly linked to the debate about international legitimacy.
Instead of Conclusions: Arguing, Persuasion, and the Legitimacy of Global Governance

I have argued in this paper that the debate about “new modes of global governance” does not only concern the inclusion of new (non-state) actors in rule-setting and rule-implementation, but also moving away from hierarchical and “command and control” modes of steering. Arguing and persuasion constitute such a non-hierarchical steering mode enabling actors to voluntarily change their perceptions of the situation and even their preferences through reasoned consensus. The paper then tried to explicate the triadic nature of arguing and applied this concept to problems of global governance in terms of both rule-setting processes and ensuring compliance with international rules.

Yet, arguing and persuasion are directly related to the debate about the legitimacy of global governance. Proponents of deliberative democracy claim that deliberation constitutes a significant means to increase the democratic legitimacy of governance mechanisms, particularly in situations in which democratic representation and/or voting mechanisms are not available options. The general idea of this literature is that democracy is ultimately about involving the stake-holders, i.e., those concerned by a particular social rule, in a deliberative process of mutual persuasion about the normative validity of particular rule. Once actors reach a reasoned consensus, this should greatly enhance the legitimacy of the rule thus ensuring a high degree of voluntary compliance in the absence of sanctions. As Ian Hurd put it, “(w)hen an actor believes a rule is legitimate, compliance is no longer motivated by the simple fear of retribution, or by a calculation of self-interest, but instead by an internal sense of moral obligation…” Such an internal sense of moral obligation that accepts the logic of appropriateness behind a given norm requires some measure or moral persuasion. Advocates of deliberative democracy argue, therefore, that deliberation and arguing not only tackle the participatory deficit of global governance (“input legitimacy” in Fritz Scharpf’s terms), but also increase voluntary compliance with inconvenient rules by closing the legitimacy gap.

However, institutional solutions in global governance to increase the deliberative quality of decision-making face at least three major obstacles which need to be addressed:

1. Involving stake-holders in rule-setting processes is easier said than done. It is often unclear who the stakeholders are and whom they actually represent. Decisions about selection of members in deliberative bodies with some policy-making power are still about inclusion and exclusion. Whom to include, whom to exclude and who actually decides about inclusion and exclusion represent, therefore, one of the most contentious processes in the establishment of trisectoral public policy networks of global governance. This problem is exacerbated by the fact that
specific stakeholder interests can usually be organized and represented much easier than diffuse stakeholder interests.

2. Once the stakeholders have been selected, how can deliberation and arguing be insured so as to improve the quality of the negotiations? Specific institutional settings are required that enable actors to engage in the reflexive process of arguing. These settings must provide incentives for actors to critically evaluate their own interests and preferences, if the arguing process is supposed to go beyond simply mutual information and explicating one’s preferences to others.

3. There is a tradeoff between transparency and argumentative effectiveness in deliberative settings. Many negotiation systems seem to show that arguing and persuasion work particularly well behind closed doors, i.e., outside the public sphere. A reasoned consensus might be achievable more easily if secrecy of the deliberations prevails and actors are not required to justify their change of position and the like in front of critical audiences. Yet, transparency is usually regarded as a necessary ingredient for increasing the democratic legitimacy of global governance. If we can only improve the deliberative quality of global governance by decreasing the transparency of the process even further, the overall gain for democratic legitimacy and accountability might not be worth the effort.

There are various institutional solutions to tackle these problems. I have argued in this paper that it is mainly the social and institutional context rather than actors’ individual motivations which determine whether arguing and communicative action can exert influence on negotiation systems. Thus, it becomes a question of designing appropriate global governance institutions and of transforming existing institutions into discourse arenas that ultimately decide whether the legitimacy of global governance can be increased.
Notes


7 Source: Börzel and Risse, “Public-Private Partnerships: Effective and Legitimate Tools of International Governance?”


11 Jürgen Habermas calls this "communicative action," Jürgen Habermas, *Theorie des kommunikativen Handelns*, 2 vols. (Frankfurt/M.: Suhrkamp, 1981). Since communications are all-pervasive in social action and interaction - includ-
ing strategic behavior (see below), I prefer the term "argumentative" rationality, since the goal of such communicative behavior is to reach argumentative consensus on validity claims of norms or assertions about the world.


14 Habermas, Theorie des kommunikativen Handelns, 209.


20 A third and fourth way would be voting and coercion which are neglected here. Very few international bodies use voting procedures in negotiation systems. As to coercion, it is ultimately based on the threat to use force and inconsistent with voluntary agreement.


23 See Risse, “International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Area,”.

24 For such a procedure see Holzinger, “Verhandeln statt Argumentieren oder Verhandeln durch Argumentieren? Eine empirische Analyse auf der Basis der Sprechakttheorie,”, Holzinger, “Kommunikationsmodi und Handlungstypen in den Internationalen Beziehungen,”.


30 On the latter see, e.g., European Commission, White Paper on Governance, Brussels: 2000?


37 For the following see Risse, “International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Area.”


41 Hurd, “Legitimacy and Authority in International Politics,” , 387.

42 See Checkel, “Why Comply?”