

Technical Discourse and Normative Affirmations: Implicit Justice Claims in Multilateral Negotiations

Stefan Groth

The public view of multilateral negotiations on pressing issues is often paradoxical: On the one hand, they are accompanied by a hyper-moralization of topics, finding its expression in protests, media coverage and far-reaching demands for immediate action. Issues are, e.g., highly morally charged with references to human rights or linked to catastrophic scenarios if no measures are taken. On the other hand, negotiations themselves are – to some participants and observers frustratingly so – at times mostly about technical details or void of moral claims. Accordingly, multilateral negotiations have often been critiqued for not sufficiently addressing issues of justice and for rendering contentious issues ‘technical.’ The contrast between high hopes in global fora and toned-down technical debates with meagre procedural outputs can, understandably, lead to frustrated stakeholders and a decline of confidence in the potential of multilateral organizations to alleviate current problems. But is a ‘de-justification’ of discourse, i.e. negotiations seemingly avoiding addressing issues of justice, indicative of the absence of moral issues and arguments? And does a ‘technicization’ of discourse which shifts the focus away from questions of justice and toward issues of legal harmonization or technical standards necessarily exclude the voicing of normative claims? Are multilateral negotiations only about moral claims if they are explicitly voiced? A number of findings and approaches from linguistic anthropology suggest that the answers to these questions is rather ‘no’ than ‘yes.’

Normative claims, i.e. utterances that include value judgments, specifically those pertaining to issues of justice, can come in many forms. This holds true for communication in everyday settings as well as for multilateral negotiations. Research on communicative indirection and conversational implicature has shown that in many contexts, it can be favorable to phrase claims in an indirect manner. As anthropolo-



gist Don Brenneis illustrates in his work on Indo-Fijian communities, in political settings overtly direct and explicit demands and statements can be regarded as inappropriate – in such situations, ‘sweet talk’ is preferred over ‘straight talk.’ This is the case for diplomatic settings as well: While it might occur that actors openly accuse or blame other actors in multilateral fora, it is a practice that is both frowned upon and an exception to communicative rules of interaction. Normative claims need to fulfill a number of conditions to be successful (and fitting), among them that utterances must be conventional in the given context, be appropriate in terms of circumstances and audience, have a propositional content directed at a future act, or be sincere. Philosopher John Langshaw Austin termed such conditions ‘felicity conditions’ of performative utterances. They have been shown to be highly specific regarding cultural and situational contexts rather than universal properties of communication.

In multilateral settings, context as a central factor in analyzing and understanding linguistic performances can be configured in ways that deter actors to use explicit normative claims. Rather, the communicative modalities of negotiations can lead to situations in which a shift to implicit justice claims is ad-

vantageous, e.g. in multilateral fora or negotiations which have been set up as an answer to normative pressures. Recurring statements on these normative pressures can then be seen as a hindrance to substantial progress and can be easily countered as they form the common or self-evident basis for deliberations. An example for this is a special committee of the World Intellectual Property Organization on the protection of traditional knowledge. Here, normative arguments about perceived global injustices resulting from the current patent system and about the lack of protection for the intellectual property of indigenous peoples are often met with blanket affirmative statements about the importance of the committee's goals. In the committee, statements about the lack of progress or about deadlocks in negotiations, e.g. by indigenous observers, are bolstered by references to human and indigenous rights or moral obligations. This explicit voicing of normative claims is, in many instances, countered by non-consequential normative affirmations: 'Yes, we agree that this is important, and we should continue to work towards finding solutions. But we need to clarify the technical details.' Having been set up after normative pressures from developing countries, the mere existence of the committee and its meetings can be portrayed as a general willingness and consensus to cooperate and is used to counter such justice claims.

In the WIPO committee as well as in other multilateral fora, felicity conditions can often disadvantage overtly explicit claims for justice. Yet, in such cases, the apparent absence of such claims (the 'technification' or 'dejustization' of discourse) does not mean that discourse is only technical and excludes issues of justice; it can also signify a shift toward a strategically favorable diplomatic register in which normative stances are implied but not made explicit. The condition for such a strategic shift is a reflexive use of language and its pragmatic features (something which has been termed 'metapragmatics' in linguistic anthropology). Actors can accordingly try to translate their claims into more technical discourses or to encapsulate them in policy. Being aware that explicit justice claims are, in terms of communicative strategy, comparably weak, framing claims in an implicit manner and tying them to specific policy recommendations is advantageous in at least two regards: It cannot be countered easily with general affirmations with no implications, and it opens up the possibility to build coalitions with other actors with similar policy goals (but not necessarily with similar normative claims).

While it can be rightly critiqued when issues are prevented from being discussed by focusing on procedural and technical issues, this can be used as an

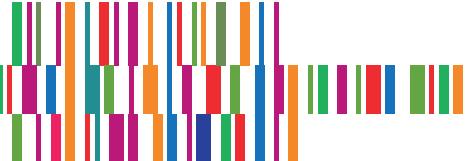
advantage as well. Yet, it requires specific communicative competence to identify felicity conditions or to translate explicit normative claims into implicit claims. From the perspective of research on multilateral negotiations, this highlights the necessity of contextualizing utterances and scrutinizing the relation between normative and nonnormative statements to tease out the implicit normative contents of communication. The apparent absence of normative claims in negotiations does not preclude a technification or dejustization of discourse. Rather, it can also signify a strategic shift toward a diplomatic register in which normative stances are only implied – not as a way of masking or concealing the normative content of utterances but as a strategy for communicating them more effectively. One reason for this is that implicit justice claims are often more successful or appropriate than explicit claims, because they prevent direct confrontation and leave room for open exchanges. Indirect speech is used as a deliberate strategy that considers felicity conditions. Although technical or procedural arguments can lack explicit normative content, the respective positions can be based on normative claims. In this respect, seemingly neutral expertise is often used politically or strategically and is accordingly based on or tied to normative claims and intentions.

Furthermore, there are often other communicative situations in multilateral negotiations which are used to mediate normative claims. In these, felicity conditions are configured differently and allow for explicitly voicing normative claims. Bilateral and less formal exchanges between actors from member states or organizations, cafeteria meetings, informal hall talks, information sessions, for example, are often used to mediate normative views. These exchanges, however, do not appear in official meeting reports or transcripts. Ethnographic research that also includes these less formal, undocumented exchanges and pays attention to communicative modalities generally and specifically for felicity conditions is needed to grasp the full extent of normative claims – implicit and explicit, on the record and informally.

Stefan Groth is Senior Researcher at the Department of Social Anthropology and Cultural Studies (ISEK) of the University of Zurich and head of the Laboratory Popular Culture Studies. An Alumni Fellow of the Centre for Global Cooperation Research, his research is located at the intersections of political and linguistic anthropology. Currently, he is working on a project on the everyday construction of Europe in non-European contexts.

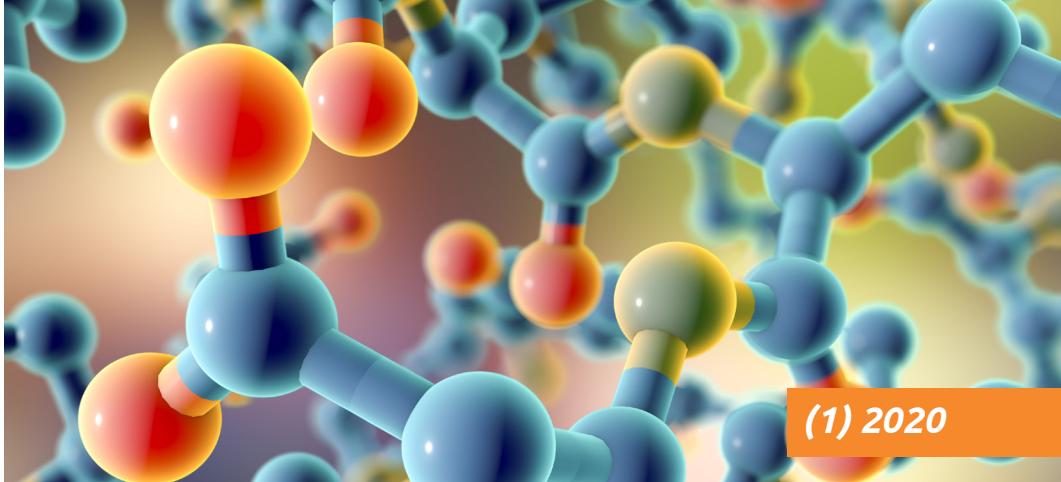


stefan.groth@uzh.ch



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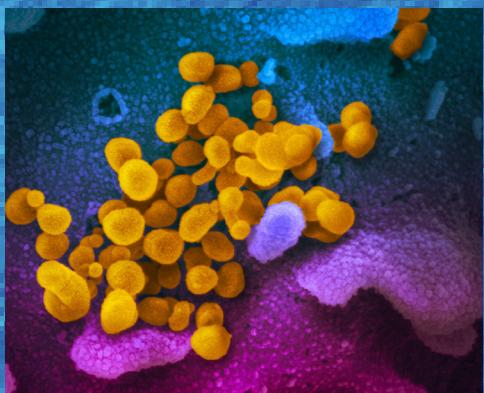
'People fail to coordinate on the optimal equilibrium'

Gianluca Grimalda, Kiel Institute for the World Economy, on collective action problems, game theory, and cooperation on COVID-19



'Polycentric systems adapt and mitigate failure'

Senior Research Fellow Maryam Zarnegar Deloffre argues for adaptation, innovation, and learning during global emergencies



'Diseases are ranked according to their perceived costs'

Benjamin Quasinowski, Institute of Sociology and IN-EAST, University of Duisburg-Essen, on metaphors of war in the health discourse and cost-benefit calculus in national health planning

they interpret the Agenda and take steps towards it. Thus, major challenges in the future are the continuous negotiation and renegotiation of the questions of how we define reality, which realities are being pursued globally, and how they speak to each other in a way so that a joint sustainable and planetary future can be achieved. We are not talking of finding one way to one sustainable future. But we are talking of never-ending local, national, regional, transregional, international, global dialogues and negotiations – across political borders, sectoral, status and religion-based, disciplinary and hierarchical boundaries.

QM: In what ways do you think developing countries in particular could benefit from an understanding of global knowledge regimes?

A.-K. Hornidge: Taking the example of western science, and how it has extrapolated industrial and economic gains made through scientific interventions into more investments back into education and scientific research, I would suggest, perhaps even a little controversially, that a focus on science and education policy in developing countries would in the long run bring much more substantial growth than a lot of other traditionally development-related policy fields. I believe that science and investment into education and research is absolutely key to development. The data shows a very clear, direct correlation.

QM: How do you then, in the same vein, imagine a sustainable exchange of knowledge in today's world?

A.-K. Hornidge: Knowledge is always also a resource. A free and unlimited sharing thus is unrealistic and probably also organizationally speaking hardly possible. Further, we need actually a high degree of diversity in knowledge production and transmission. Only this diversity assures a flexibility in being able to deal with rapidly accelerated change processes. Or with sudden decelerations, as we currently observe due to the Corona-pandemic. A sustainable exchange of knowledge thus means that we reduce hierarchies between knowledge systems. An important step here is the development and further fostering of science systems all over the globe. There is not one type of science, i.e. Western/Northern science in a Kantian tradition, but there are many. And that's exactly what we need. Together, in close cooperation and dialogue with each other, they then bear the potential to act as a telescope for understanding human-nature interactions and what they mean for a sustainable, planetary future. The ocean, or any global common, here offers a uniting focus that brings actors into a tangible conversation with each other.

QM: In this equalizing initiative for long-term development, where would you place the role of the

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Fax: +49 (0)203 379-5276
E-Mail: info@gcr21.uni-due.de

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