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Procedural Justice and Global Order: Explaining African reaction to the application of global protection norms

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Abstract

Persistent tensions between the international norm of state sovereignty and emerging human rights norms including the responsibility to protect and the protection of civilians during international peacekeeping raise the question of when and under what circumstances local and regional actors are more likely to respect global norms. These tensions are particularly stark in Africa. On the one hand, African states and regional organization were among the first proponents of liberal protection norms in the non-Western world. On the other hand, many African leaders view state sovereignty as indispensable. Building on established empirical justice research in neighboring fields, this paper makes an important contribution to the literature by demonstrating that African states are more likely to accept interventionist human rights norms when standards of procedural justice have been observed. The article demonstrates the relevance of procedural justice by examining the puzzle of divergent African reactions to two similar instances of regime change in Libya and the Ivory Coast that have been enforced by extra-continental actors in the name of global protection norms.

In lieu of an introduction: The fall of two potentates and the puzzle of Africa's divergent reactions to the application of emerging global norms

In the early hours of 20 October 2011, NATO aircraft detected and attacked a convoy fleeing from the besieged city of Sirte, Libya. One car carried Libya's long-time leader Muammar el-Qaddafi. Colonel Qaddafi survived the airstrike and sought shelter in a drainpipe. Upon his discovery by rebels, he was tortured and executed. His corpse was displayed publicly in a freezer in the town of Misurata (Human Rights Watch 2012). This gruesome event temporarily ended a conflict that had started in mid-February between rebels under the umbrella of a National Transitional Council and forces loyal to the Colonel. When Qaddafi's troops gained the upper hand, leading the international community to fear the imminent fall of the rebel stronghold in Benghazi and mass atrocities, the UN Security

Council (UNSC) on 17 March issued Resolution 1973 authorizing all necessary means to enforce a no-fly zone and to protect civilians in danger. The resolution alluded to the emerging Responsibility-to-Protect norm (R2P) and is widely held to be the first case of R2P application. Officially, intervening states claimed that their use of force was restricted to pursuing the two legally sanctioned aims of enforcing a no-fly zone and protecting civilians. However, the actual employment of military force led most African and international observers to conclude that regime change was the true aim (Global Centre for the Responsibility-to-Protect, 2012: 12f.).

163 days earlier, another Head of State in Africa experienced a less violent, yet similarly coerced overthrow. On 9 April, French helicopters and UN-troops opened fire on President Laurant Gbagbo's residence in Abidjan, the Ivorian capital. After the first salvos had driven most of the remaining presidential guards from the compound, French tanks enabled opposition forces to enter the President's hideout. Gbagbo was dragged from his bunker, paraded in front of the international press, and eventually handed over to the International Criminal Court (ICC). Prior to Gbagbo's capture, French forces of Operation Licorne and UN-troops of the United Nations Operation in Cote d'Ivoire (UNOCI) militarily decided a power struggle between forces loyal to the acting President and those of his challenger, Alassane Ouattara, that the 2010 presidential elections had triggered. UN and French troops intervened on the basis of UNSC resolution 1975, which had been adopted on 30 March 2011, just 13 days after resolution 1973. Although international bodies had noted Gbagbo's electoral defeat, resolution 1975 ordered UNOCI to act impartially. The resolution authorized the UN-force "to use of all necessary means to carry out its mandate to protect civilians under imminent threat (…)." The resolution thus invoked a related emerging norm that calls for the Protection of Civilians (POC) in peace-keeping operations.[1] France and the UN insisted that military operations conformed strictly to the UNSC's mandate. Major Fréderic Daguillon, a French military spokesman, even claimed that the French tanks deployed on the morning of 9 April were responding solely to attacks on civilians. "We deployed along the strategic axis. One of these was a road that led to the residence of Mr. Gbagbo." (The Guardian, 2011)

Again, few commentators in Africa and beyond believed that the ouster of Gbago was an accident or an unfortunate by-product of the primary aim of protecting civilians. Yet, the reactions in Africa to the two events differed fundamentally. The African Union (AU) and many African states, principally South Africa, denounced Western actions in Libya as a betrayal of the UN, an abuse of the mandate, and even as an outright act of neo-colonialism. After the intervention, the AU and African states strayed from the R2P norm and refused to back Western draft resolutions in the UNSC demanding an end to the mass atrocities in Syria. In contrast, African reactions to the intervention in the Ivory Coast were mostly favorable, in some capitals rather restrained, but almost nowhere hostile. Moreover, after the intervention, African regional organizations and states continued to support the POC norm and the UN's leading role in implementing it in Africa.

Why did the majority of states in Africa denounce the forced removal of Qaddafi from power in pursuance of the R2P norm? And why did they accept or even support the forced removal of Gbagbo in pursuance of the related POC norm? The divergence of their responses to similar applications of related norms is a puzzle and the subject of this article. I resolve this puzzle by arguing that African leaders accepted regime change in the Ivory Coast but rejected it as illegitimate in Libya because they had been fully involved in the process of applying the protection norm in the first case but had been

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[1] For overlaps and differences between the R2P and the POC norm, see Breakey (2012).

excluded in the second case. Though interesting in itself, this puzzle also suggests a larger research program that would examine the influence of procedural justice on the likelihood that local and regional actors comply with emerging, liberal norms. This paper makes a significant contribution by assessing the application of two important norms in the crucial region of Africa.

The relevance of Africa's mounting critique of R2P for the future of global governance can hardly be understated. Africa was the first non-Western region to embrace R2P. Given the skepticism in other regions, including a "right (…) to intervene in a Member State (…) in respect of grave circumstances (war crimes, genocide and crimes against humanity)" in Article 4(h) of the AU's Constitutive Act, adopted on 11 July 2000 and thus even before the release of the path-breaking report of the International Commission on Intervention and State Sovereignty, seemed to indicate that core liberal global governance norms would also flourish in non-Western parts of the world. Africa's stinging R2P critique following the intervention in Libya was interpreted as a historical breach. It appeared not only to herald the end of R2P (Rieff, 2011), but also to foreshadow organized resistance from non-Western regions against principles of liberal order. This impression was reinforced by similar developments in international criminal justice. Here too, African states and organizations were among the first proponents of the International Criminal Court (ICC) and the underlying norm of holding individuals accountability for mass crimes in the non-Western world, and their support was crucial to the adoption of the Rome Statute. Yet, early applications of said norm – most importantly the warrant for Sudanese President Al Bashir, prompted the AU to question its support for the ICC and catalyzed the search for an African version of international criminal justice (Magliveras and Naldi 2013). Given these setbacks, the Ivorian case provides rare encouragement for proponents of global norms and accentuates the puzzle concerning disparate African reactions to applications of global norms.

Existing research on local reactions to emerging global norms mainly applies norm diffusion theories. Two main strands of these theories would resolve this puzzle by pointing to the "fit" between the R2P and POC norms and pre-existing African traditions and interests that purportedly favor regime security over human security. According to this argument the AU's early support of R2P was tactical and never anticipated that acting heads-of-state would be charged for crimes committed in their names. In contrast, including the obligation in peacekeeping mandates to protect civilians requires the approval of the target state, and is ostensibly less regime threatening as a result, thus conforming to the interests of African states. Accordingly, early applications emphasized differences in interpretation between African and Western actors and resulted in the deterioration of R2P and the specification of the POC norm. Other explanations would emphasize case-specific factors, like differences in the leaders' standings relative to their peers or differences in the conflict situations that might affect the appropriateness of regime change. In the concluding section, I examine both explanations and find that neither accounts for the disparate African reactions.

Against these general and case specific explanations, this paper emphasizes one decisive cause of contestation that obtains in both cases: the independent effect of procedural fairness on the acceptability of distributive decisions based on emerging norms. The impact of decision-making in "accordance with generally accepted principles of right process" (Franck 1990: 24) on the legitimacy and resultant acceptability of rules and institutions has been widely discussed in political science and international law. Thomas Franck emphasizes four properties of rules (determinacy, coherence, symbolic validation and adherence) that influence the compliance pull of international law. Scholars of international law and International Relations in the constructivist tradition stress the importance

of common understanding and deliberative interaction that allow actors to challenge and verify validity claims and seek consensus about the justification and application of the norms guiding their behavior (Risse 2000: 7; Kratochwil 1989). As I will demonstrate below, empirical justice theory addresses both procedural properties and interaction between authorities and those affected by decisions that allows the latter to verify the appropriateness of decisions. However, in contrast to Franck, justice theory puts more stress on relational issues like e.g. the recognition of affected actors by authorities. In contrast to the above mentioned constructivist approaches, justice theory pays less attention to normative and foundational issues like the possibilities of inter-subjective understanding and is rather driven by empirical observations of human conduct. In other words, justice theory departs from this research by providing a motivational theory that explains why actors insist on just treatment and how they react to acts of procedural injustice.

Justice is one of the most over-used words in international public diplomacy. Virtually every keynote speech or UN-debate on global order refers to justice. Yet IR scholars, still influenced by Thomas Hobbes's verdict about justice being inapplicable to inter-state relations (Hobbes, 1994 [1651]: 97), tend to dismiss such references as empty talk. Although justice as a normative concept has become prominent in the sub-discipline of international political theory, it has rarely been studied empirically as a motivation for political actors.[2] This neglect contrasts markedly with the prominence that empirical justice research has gained in neighboring disciplines, like social psychology. Most important in the current context is the relationship between the two dimensions of distributional and procedural justice, which suggests three arguments. First, regional organizations and states of the "Global South" will insist on procedural rights as a condition for accepting global norms like R2P and POC. Second, the actual granting of procedural rights in the run-up to decisions on the application of those norms autonomously affects how states perceive the fairness of these decisions and may also affect acceptance of the norm-set in question. Third, decision-makers react to the denial of procedural rights with behavior familiar to socio-psychological studies: rage, stubbornness and other kinds of "non-rational" behavior.

The article proceeds as follows: the next section will summarize empirical justice research in neighboring fields, arguing that the study of International Relations would benefit from incorporating this research. More specifically, it will show how justice approaches can contribute to debates on global governance. The chapter will conclude by providing a hypothetical explanation of the puzzle based on justice and norm diffusion theories. Sections three and four examine processes of African norm appropriation and reactions to early norm applications. The concluding chapter will assess alternative explanations in light of the findings presented from both cases and draw lessons for the future of global governance.

What explains local reactions to global norms: Institutional justice versus normative fit

Toward a theory of institutional justice

In contrast to justice as a normative concept that has occupied political theorists since Plato and Aristotle, empirical justice research focuses on the justice claims of real-world actors. Empirical justice research began to flourish in the 1960s as a sub-field of social psychology (Tyler, 2012; Jost

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[2]There are some exceptions. Albin and Druckman (2012) demonstrate that justice is important for the success of international negotiations. David Welch found that justice claims drive conflict (Welch, 1993). See also Druckman and Müller (2014).

and Kay, 2010: 1123) and is now firmly established in the social sciences, for example in organizational theory (Greenberg and Colquitt, 2008; Konovsky, 2000), experimental economics (Binmore 2005), sociology (Jost and Kay, 2010), social neuroscience (Singer, 2007; Singer et al., 2006), criminology, and anthropology (Boehm 2001). This fledging research program took wing with John S. Adams's (1965) groundbreaking work on equity theory, which showed that the justice motive works independently of interests. Through numerous experiments and field studies since that study, empirical justice research has demonstrated that justice considerations are significant for intra-group interaction. Judgments about what is just or deserved profoundly influence people's behaviour and their interaction with others, including authorities (Tyler and Smith, 1998: 595). Experimental research shows that justice judgments are linked to pro-social behaviour, such as willingness to contribute voluntarily to the flourishing of social groups (Fehr and Gächter, 2002), and that experiences of injustice trigger anti-social behaviours, like theft or sabotage (Sigmund et al., 2002: 84; Nowak et al., 2000).

In examining the role of justice concerns, empirical justice research holds two different dimensions of justice to be significant: distributive and procedural justice. Distributive justice refers to standards that determine how material and immaterial goods ought to be shared. Procedural justice is conceptualized as the fairness of processes that lead to distributive decisions. More precisely, procedural justice pertains to processes that guide the application of general distributive rules in concrete situations, which are usually controlled by authorities. Both dimensions are interrelated in that weaknesses in one dimension may be compensated by strength in the other.

The importance of procedures and how they affect the acceptability of distributive outcomes can be illustrated with reference to litigations, which was the object of research of two pioneering scholars in this field, social psychologist John Thibaut and lawyer Laurens Walker. They assume that actors do not question the law (established rules) as such but might perceive the ruling (application of established rules) by courts (authorities) in concrete cases as fair or unfair. Actors will more likely accept even those verdicts as fair that do not conform to their initial expectations, provided the procedures were fair. If, on the other hand, they feel that the procedures are structurally biased against them, they will likely start to question the established judicial system, though not necessarily the law as such. Actors might value procedural justice even more highly than distributive justice because the latter is difficult to assess, but the former admits inferences about distributive fairness. Concerning causal mechanisms, procedural justice theory does not assume that procedures influence the acceptability of outcomes because they change preferences – judicial deliberations may alter the views of the persons involved or not – but because the process itself is fair. Thibaut and Walker (1975: 546) emphasize process control and disputants' voice opportunities as core aspects of procedural justice. Process control provides crucial information about the correctness of the process. Others, like Gerald Leventhal (1980), argue that the fairness of decision-making processes depends on several properties, like consistency of application, impartiality of decision-making bodies, and the accuracy of information flowing into the procedure.In brief, actors are more likely to accept even decisions that do not conform to their initial expectations if they feel that the decision-making process allowed input, if authorities have not taken advantage of them and if they have been treated with respect.

As to why justice is so important for actors, empirical justice research has generated both an interest-based and an identity-based model. The first assumes self-interested actors who depend on social interaction to achieve gains. According to this model, "justice is important because it 'regularizes'

social interaction" (Tyler and Smith, 1998: 612). A second model, advanced by Allan Lind and Tom Tyler (1988), is based on social identity theories. Their group value model assumes that procedures within groups reflect relations of status, power, and authority. Actors assess their standing within a group depending on how other members of the group, especially authorities, treat them. When applied empirically, conceptual differences between the two models quickly blur. In brief, both models suggest that the human sense for justice serves social functions: it facilitates the distribution of yields from common endeavours, allows actors to find their place in hierarchies, and fosters the acceptance of authorities. Thus, research asserts that justice conceptions have co-evolved with practices of social cooperation. Justice is a co-constitutive element of stable social interactions and community-building.

These findings have been established by analyzing the behaviour of individuals in small groups. This begs the question whether they can be applied to the analysis of relations between large groups or states. Recent research indicates that they can. First, empirical studies in social psychology indicate that individuals identify with groups and want to see their group treated fairly in inter-group relations. Studies on relative deprivation, for example, show that individuals, even if they are not affected, protest if they perceive their social group to have been disadvantaged (Tyler and Smith, 1998: 605, 610). Second, recent research in International Relations has found that social dispositions and experiences on the individual level have repercussions for state behaviour. This has been demonstrated, for example, with respect to emotions (Mercer, 2010, 2013), humiliation (Saurette, 2006), and disrespect (Wolf, 2011). Two causal chains may explain this transfer. First, state leaders and foreign policy elites may perceive the international system as a social order and be guided by their perception of what is just within this social order when formulating foreign policies. Second, the assumption above that members of large politically organized groups or states identify with those states may lead to shared conceptions of justice that should guide the relations of their states with others.

This review reveals ample and hard evidence that justice claims matter in social relations. Of course, the global world is still a state-centric system, and many of its norms and rules are still emerging. Justice claims, even those about the rights of individuals, will thus mainly be formulated on the level of inter-state relations, and justice conceptions will be less demanding and less definitive than in domestic discourse. Yet, the contemporary international system is characterized by increasing interdependency, externalities, hierarchies and authority, and increasingly resembles a social order (Hobson and Sharman 2005). It would be surprising if justice considerations were relevant for cooperative endeavours in most social contexts, but not internationally.

To show where justice theories converge and diverge from existing research on global governance, the next section will summarize central assumptions of norm diffusion theories and specify how norm diffusion and justice theories frame and resolve the puzzle.

Contributions of norm diffusion and justice theories to debates on global governance

Early research on norms in IR focused on how norms emerged internationally, diffused, were accepted by an increasing number of actors, and were institutionalized in the form of international conventions and law (Finnemore and Sikkink, 1998). Noting that norms' meanings often remain contested even after many states subscribe to them, recent research has criticized this linear conception (Badescu and Weiss, 2010), arguing instead that norms, even after they have become

institutionalized, still "tend to be vague" (Krook and True, 2012: 104), remain a "work in progress" (Betts and Orchard, 2014: 2), and can be stable as well as dynamic (Wiener, 2007). One obvious reason for this indeterminacy is the abstract character of norms. Norms provide general guidance but can never cover every contingency. They are characterized by 'zones of uncertainty', since it often remains unclear "exactly what changes in behavior will be required to meet international commitments" (Victor et al., 1998: xi). Lingering differences over the meaning of norms are likely to emerge in the first applications (Sandholtz, 2008: 101). This 'zone of uncertainty' problem as well as the importance of early applications are familiar to both institutional justice theories and norm diffusion theories. Disputed are the structural causes that explain why seemingly accepted standards become contested after early applications.

Norm diffusion theories emphasize structural cleavages that appear when norms travel across cultural and historical contexts. Two strands of this research are relevant here. Socialization theories propose that pioneers set standards that less advanced actors will emulate (DiMaggio and Powell, 1983). Sociological institutionalism stresses structures, most importantly world cultural systems, as determinants that induce institutional isomorphism across regions (Meyer, Boli, Thomas and Ramirez 1997). In contrast to functional theories, sociological institutionalism assumes that isomorphic change is not task-driven or efficiency-oriented and, thus, often leads the formal adoption of institutions to decouple from daily practices (Schofer, Hironaka, Frank and Longhofer 2012: 60) In contrast, most versions of this strand in International Relations qualify assumptions about quasi-automatic diffusion and instead emphasize the importance of agents of socialization and various socialization mechanisms, like strategic calculation, role-playing, and suasion (Checkel, 2005). They, too, expect gaps in these adoption processes and consider the fit between emerging global norms and pre-existing local practices as the most important factor for successful socialization. In contrast, localization theories emphasize the autonomy of local actors and their ability to react creatively and strategically to global normative pressure. Depending on how global norms relate to 'cognitive priors' (Acharya, 2004), i.e. preexisting traditions, habits and interests (of state elites), target states will reject, accept, or prune them according to their needs. Though the two strands start from different perspectives, they agree on one central point. Unqualified acceptance is improbable. Instead, local actors, based on their local cultural background knowledge, interpret international norms differently. While localization theories assume that norms will be 'pruned' to fit existing local traditions and practices, socialization theories expect that strategic adjustment and role-playing is more likely than internalization. Both theories, therefore, perceive conflicts over application as indicators of theretofore hidden differences regarding the meanings of norms.

Applied to the African position toward R2P, both strands would argue that the negative reaction to the norm's early application in Libya revealed differences in the interpretation of what R2P actually entails. These differences would have pertained in particular to whether R2P can legitimize an international use of force against incumbent governments that fail to meet their obligation to protect. Applied to POC, norm diffusion theories would argue that the fit between the global understanding of the norm and local traditions and interests was better and, accordingly, that initial applications of the norm led to a mutual determination of its meaning.

The reasoning of justice theory, too, departs from the 'zone of uncertainty' problem. Uncertainty arises because norms are not self-enforcing, often including mechanisms or procedural annexes stipulating how and by whom they are to be applied in concrete situations. Procedures become more important when the uncertainty zone is wide and norms have profound implications. R2P and POC

are cases in point. As I will show, both are exceedingly under-specified yet involve possibly severe risks, as they penetrate the protective cloak of sovereignty and imply a potentially dramatic re-distribution of adjustment costs, risks, and obligations. R2P and POC procedures are controlled by two groups of actors: states that command superior institutional resources, especially the permanent members of the UNSC, and states with the resources to implement decisions, that is, 'coalitions of the willing' in the case of R2P and troop-contributing countries in the case of POC. From this point of view, uncertainty pertains to whether distributive decisions taken by authorities like the UNSC are fair and appropriate interpretations of the norm or reflect ulterior motives. An example might clarify this point. Observers agree that R2P is not consistently applied but differ on why. Jennifer Welsh argues that "inconsistency is built into the very fabric of R2P (…)" According to her, inconsistency is necessary because each crisis is different (Welsh, 2014: 137). Hence, what might appear as a double-standard actually results from attempts to apply a norm consistently across different cases. Others posit that inconsistency results from distorted decision-making processes. The P-5 simply do not honor their commitment under Art. 24.1 of the UN Charter to act on behalf of the world community and instead pursue narrow national interests (Hehir, 2011: 18). The zone of uncertainty problem, according to this analysis, consists of the difficulty actors have determining whether the norm's application reflects case-specific peculiarities and is thus fair or represents double-standards and ulterior motives of the decision-making authorities.

This analysis leads to three hypotheses:

(a) Actors care about procedures. African states' support for the R2P and POC norms is conditional on the fairness of the procedures regulating their application in Africa.

(b) Procedures have an autonomous effect on actors' inclinations to accept distributive decisions. In the current cases this implies that, prior to both crises, African positions toward R2P and POC were neither settled nor very different from those of many Western countries. According to this interpretation, procedural voice opportunities were denied during the Libyan crisis, and this experience of injustice caused the African critique of the outcome and ultimately of the R2P norm-set as a whole. This argument also implies the counterfactual that, if voice opportunities had been granted, the AU would have accepted deposing Qaddafi. With regard to POC, justice theory holds that the fairness of procedures during the Ivorian crisis induced Africans to accept the outcome and support a more robust interpretation of POC. The counterfactual to this narrative is that, had procedural rights been denied, African states and regional organizations would not have accepted deposing Gbagbo and would have been more critical of POC.

(c) States react with pro-social behavior when treated fairly and with non-social behavior when treated unfairly. Pro-social behavior, such as committing to uphold a shared norm, is more difficult to detect. However, we should be able to observe non-social behaviors, such as stinging criticism and disengagement, of African actors in reaction to unjust treatment in the Libyan case. I will not systematically test this third argument, but I do present anecdotal evidence.

As mentioned above, justice theory suggests that the fairness of procedures could be improved by granting those subject to global rules a voice in their application and by ensuring that authorities observe fairness criteria when applying rules (e.g. consistency and impartiality). Both dimensions are relevant in international relations. For example, the current policy debate on reforming global governance architecture revolves around two proposals: a thorough overhaul of the Security Council

and increased say for regional security organizations (United Nations 2015a). As Security Council reform remains stalled, the second dimension gains prominence. Thus, for the rest of this paper, procedural justice is understood as granting affected states and regional organizations voice opportunities in the application of global norms to the extent that these actors claim such opportunities. Forms of institutionalized voice opportunities in the application of global norms may range from (a) a right to prior consultation; (b) shared ad hoc arrangements (e.g. joint peace operations like UNAMID in Darfur) and (c) regional implementation mechanisms (e.g. EURATOM's nuclear material accounting and control system that dovetails with IAEA controls in EU states) to (d) granting regional organizations the legal right to veto Security Council decisions.

In the following sections, I investigate the reactions of the African Union and African states to both protection norms. I focus on South Africa, since Pretoria strongly influenced the AU's diplomatic activities in both crises.

The African Union and the Responsibility to Protect

The concept of an international responsibility to protect individuals against genocide, war crimes or crimes against humanity quickly gained traction after the International Commission on Intervention and State Sovereignty published its report in 2001. The world community welcomed this emerging norm, as many commentators have characterized it, at the 2005 World Summit, yet its contours remained indistinct. A vague consensus emerged prior to Libya that R2P entails a layered system of responsibilities of (a) states to protect their citizens, (b) the international community to assist them, and (c) the international community to intervene if states manifestly fail. Further, international consensus coalesced around the principle that military force be used only as a last resort. The World Summit also specified R2P's procedures by confirming the UNSC's authority to authorize coercive measures without, however, answering questions that had already been raised by the ICISS, such as what to do in cases of capricious Council inaction.

As mentioned above, the AU incorporated the idea of R2P in its Constitutive Act as early as July 2000. Article 4(h) of this document grants the Union the right to intervene in serious crises in a member state. This suggested that the establishment of the AU in 2001 to succeed the discredited Organization for African Unity (OAU) heralded a normative shift from a culture of non-intervention to one of non-indifference (Williams, 2007). It appeared that African states were not only accepting Western norms, but that R2P in particular was a "norm born out of Africa" (Williams, 2009: 397).

The AU's acknowledgement of R2P was surprising. Many African states are fragile, ruled by authoritarian regimes and can quickly become sites of serious conflict and targets of humanitarian intervention. Consequently, article 4(h) was much debated during the founding of the AU, and a number of states remain skeptical of the principle. This normative shift only occurred due to the shock of the Rwandan genocide and the entrepreneurship of countries like South Africa and Nigeria (Tieku, 2004). To make the R2P more palatable, they appealed to existing ideas of pan-Africanism and traditional expectations of solidarity with oppressed fellow Africans (Adebajo, 2010: 417; Dembinski and Schott, 2014: 371-74; Williams, 2011: 155). Nevertheless, the AU remained divided. Prior to the crisis in Libya, three positions had arisen: South Africa, Nigeria, Rwanda and Ghana supported R2P; the Arabic states in North Africa along with Zimbabwe opposed it; and the rest positioned themselves somewhere between these two poles (Williams, 2009: 414f). In practice, African implementation of R2P remained inconsistent after 2005, and the AU oscillated between the

principles of non-indifference and non-intervention. Although their reaction to the crisis in Darfur reflected a new sensibility toward abuses of power by states, it also revealed reservations about acting against incumbent governments (Kieh, 2013). Even states that staunchly supported R2P were reticent about the norm's practical consequences. South Africa is a case in point. As previously mentioned South Africa was one of the most instrumental norm entrepreneurs and played a pivotal role in anchoring R2P in the AU's Constitutive Act (Landsberg, 2010: 441). Yet, in line with its concept of *Pax South Africana*, Pretoria preferred a strategy of engagement, quiet diplomacy, and compromise. It also viewed "military intervention as being at the far side of a spectrum of coercive measures (…) to be taken only after other instruments had been exhausted." (Landsberg, 2010: 446; see also Mabera and Dunne, 2013; Verhoeven et al., 2014). Critics in South Africa have denounced this approach for fostering regime security instead of human security (Aboagye, 2012). Yet before Libya, neither the AU nor the majority of African states questioned the appropriateness of R2P or rejected for principled reasons a robust interpretation of this norm. The South African last resort doctrine, shared by the AU, signified not principled opposition against using force in R2P contexts but was intended to reduce tensions between R2P and the African preference for preventing and resolving conflicts peacefully. Moreover, Africa's approach to R2P conformed to many Western countries' understanding of the norm.

R2P's African proponents, however, made their assent dependent on one central condition. They insisted that the AU would decide on the exercise of the norm in Africa, rather than the international community or the UNSC. Article 4(h) explicitly arrogated the right of intervention to the AU. The Ezulwini Consensus from 2005, on the basis of which the AU prepared its position for the World Summit, reinforced support for R2P but also insisted that only regional organizations decide on interventions in their respective regions. (African Union 2005: 6). This insistence on 'voice' was meant neither to prohibit interventions by extra-continental powers nor to legally challenge UN prerogatives.[3] Rather, these stipulations were intended to give Africans control over the activities of extra-continental powers.

This attempt to establish R2P and to use procedural mechanisms to minimize the risk of exploitation was tested during the Libyan crisis. As violence on the part of the Libyan government against its populace escalated in February 2011, the AU aligned with the international community. When announcing its first official position on 23 February, the AU sharply criticized the actions of the Libyan government (African Union, 2011a). As the conflict approached armed confrontation between the Qaddafi regime and the opposition in Benghazi, the AU drafted a road map for resolving the crisis during a follow-up meeting on 10 March. This document rejected foreign military intervention and instead called for urgent African action to end hostilities immediately, to protect civilians and to implement political reforms. To prime negotiations between the conflicting parties, the AU assembled a high-ranking ad hoc group to travel to Libya (African Union, 2011b). The three African countries with a seat on the UNSC, South Africa, Nigeria and Gabon, supported Resolution 1970 without reservation. After initial hesitation, South Africa decided to also support Resolution 1973 on 17 March 2011, thereby ensuring a majority for the resolution, since the other two African members followed Pretoria's lead (Adler-Nissen and Pouliot, 2014: 904). Up to this point, the African states and the AU shared the international consensus to implement R2P in Libya, if necessary by using force

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[3] In recent decisions the AU Peace and Security Council acknowledged the primacy of the UNSC in matters of security but stressed that the relationship between the UN and the AU should be a guided by a 'flexible and innovative application of the principle of subsidiarity' (African Union, 2012b).

gradually and as a means to enforce a compromise. This approach apparently conformed to the views of the Western initiators of Resolution 1973 as well. The latter even approved a passage in paragraph 2 of resolution 1973 explicitly mentioning the planned dispatch of an AU delegation to Libya with the goal of resolving the crisis.

Accord between the AU and the initiators of Resolution 1973 deteriorated into strife as soon as the first coalition bombs fell on 19 March 2011. The coalition of willing states closed Libyan airspace, thereby blocking the AU's mission. Once this ad hoc group was finally able to enter the country in April 2011, it became clear that their pleas for negotiation did not fail on account of opposition from Qaddafi, but instead due to the National Transitional Council in Benghazi. According to the ad hoc group's interpretation, the aerial war had consolidated the rebels' dismissive position. The Transitional Council had gained military high ground and now hoped to win the conflict militarily. The clearer it became that the coalition's intervention would lead to forced regime change, the more the AU distanced itself from the coalition and became disenchanted with the R2P principle it had previously supported.

Reactions to the intervention in Libya by African states reinforced existing differences. While Nigeria and Rwanda seemed to understand the coalition's actions somewhat (Kagame, 2011), rejection was pronounced in countries such as South Africa and Uganda. However, similar splits were observed among EU member-states. More important were the similarities in Africa. A large majority of AU member states agreed that African rights had simply been ignored and that their efforts to find a peaceful solution were undermined through the coalition's actions. Moreover, although the issue of heads-of-state's immunity played a role (Omorogbe, 2012), many African leaders suggested that Qaddafi would have to step down (De Waal 2013: 370). Even Ugandan President Yoweri Museveni stressed the right of the Libyan opposition to resist, criticizing merely the interference by extra-continental actors. South Africa's position is of particular interest. Why Pretoria made the last minute decision in favor of 1973 remains controversial. However, sources close to South African decision-makers claim that Pretoria knew the resolution would trigger the use of force but reckoned that (a) military measures would be used to protect civilians and improve the likelihood of a diplomatic solution[4] and (b) that Qaddafi's demission would have to be part of this solution (McKaiser, 2011).

The root of the conflict was in how Resolution 1973 was implemented, and how this served to marginalize the AU. With their right of participation and control ignored, and the AU's efforts undermined, African actors reacted harshly and defiantly, as statements by leading AU representatives and countries such as South Africa attest. This reinforces the significance of the justice motive and the awareness of unjust treatment.

African leaders' statements clearly illustrate that they resented what they perceived as unfair treatment of African states by the coalition members. AU chairman Jean Ping condemned the coalition's actions as adverse to the peace process and accused coalition members of having a hidden power agenda (BBC News, 2011). Just before the end of the conflict, he criticized double-standards in the West's treatment of covert military assistance (Tull and Lacher, 2012: 9). Museveni (2011) argued that "Western countries always use double standards. Their actions […] are emphasizing that might is right". South African presidents Zuma and Mbeki charged that the states with the power to bomb

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[4] See the statement of South Africa's Ambassador to the UN, Mr. Sangqu, justifying the vote in favor of 1973, UN Security Council, 6498th Meeting, S/PV. 6498, New York 17 March 2011, p. 9f.

deliberately undermined African peace efforts; they used their advantageous position to abuse Resolution 1973 and to marginalize the AU (Mail and Guardian Online, 2011a, 2011b). In a speech before the UNSC, Zuma argued that it was "the view of the AU that the 1973 Resolution […] was largely abused in some specific respects" (de Waal, 2013: 367). Further, he stated that what informed the treatment of African states was not the unbiased interpretation of a general principle but the idea of "might is right" (Mbeki, 2011). The South African President not only criticized the coalition's lack of respect for international law but particularly the violation of the African right to self-determination. In his view, arbitrary and unfair treatment was so pronounced in the case of Libya that he claimed it set a "very dangerous precedent", rhetorically asking "which African country will be next?" (Mbeki, 2011). A similar critique appeared in a public statement signed by over 200 African intellectuals, stating that the UNSC had allowed a coalition of powerful and willing states to usurp Resolution 1973 and undermine the AU's roadmap. Thus, the UNSC had supported "the immensely pernicious process of the international marginalisation of Africa even with regard to the resolution of the problems of the Continent" (Open letter by "concerned Africans", 2011). During the letter's formal introduction, one of its initiators, Johannesburg Professor Chris Landsberg, warned that "the re-colonisation of Africa is becoming a real threat." (Global Research, 2011)

Perceptions of unfair treatment also led to defiant policies by the AU and African states. As a first expression of its frustration, the AU boycotted the Paris Summit on 19 March and the London Conference on 29 March 2011, where the Libya Contact Group was established, thereby sacrificing the opportunity for further influence (de Waal, 2013: 371). Escalating further, on 1 July the AU recommended that its member states ignore the international arrest warrant for Qaddafi (The New York Times, 2011). The AU defiantly refused to recognize the National Transitional Council as representing Libya until Qaddafi's death on 20 October 2011. The AU and South Africa's seeming irrationality baffled observers, who characterized their behavior as "stubborn" and "obstinate" (Tull and Lacher, 2012: 8f). Others noted that the ANC leadership "fumed" when NATO special forces appeared on the ground and that Pretoria felt "betrayed" (Verhoeven et al., 2014: 525f.).

Following Libya, the AU and African states reassessed the risks of R2P (Zähringer, 2013). This distancing manifested in South Africa's position toward the crisis in Syria. In 2011 and 2012 Pretoria abstained on two of three Western-sponsored UNSC resolutions (S/20111/612 and S/2012/538) and voted in favor only of S/2012/77, which explicitly ruled out the use of force. While deliberating UN Draft Resolution S/2011/612 in October 2011, which condemned the use of force by the Syrian government, South Africa did not reject R2P but argued that Resolution 1973 had previously been abused (United Nations, 2011a: 10f.). In UN debates, South Africa defended the notion of R2P but insisted on fair procedures that would curtail the discretion of intervening states.[5] This approach was mirrored by representatives of other African states, who demanded that either regional organizations' procedural rights be strengthened or that the AU reviews its stance toward R2P (Hofmann, 2015: 296).

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[5] See, for example, South Africa's statement at the informal dialogue on R2P 2012, New York, 5 September 2012,
http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwimr6OxjoTNAhWIDBoKH
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6_hNG8oDzpjdMQLZlepOpDQ&bvm=bv.123325700,d.bGs.

To summarize, case specific evidence does not allow a final verdict in the controversy whether the African leader's objections to the Western approach in Libya were based on disagreement over the meaning of R2P or on a perceived violation of procedural fairness. Yet, it indicates that crucial African states, such as South Africa, did not principally opposed the use of force but tried to balance different norms and the crosscurrent demands of protecting civilians and solving conflicts peacefully. Only the marginalization of the AU clearly changed the African position and fuelled criticism and anger in Pretoria and elsewhere. More important are insights from the comparison of the interventions in Libya and the Ivory Coast described below. They lend credence to the counterfactual argument that the AU might have accepted a forced regime change, if the AU has a say in the implementation of resolution 1973 and, if the AU's mediation efforts failed, raising the specter of an unlimited war.

The African Union and the protection of civilians during peacekeeping missions

Since the late 1990s POC has become a "core obligation" of UN peacekeeping (United Nations, 2015: 11). The UN developed this concept in response to the increasing multi-dimensionality of peacekeeping missions as well as to the shift away from state-centric security and toward the principle of human security. The UN Assistance Mission in Sierra Leone (UNAMSIL) in 1999 was the first with an explicit mandate to protect civilians. Since then, most UN missions have operated with a POC mandate. Still, the UN has yet to clarify what POC implies in practice and how it relates to the traditional core principles of peacekeeping: consent of the conflicting parties, impartiality, and non-use of force except for self-defense.

At first glance, POC seems more palatable to African states than R2P because, as a mandated obligation, it is based on the consent of local governments and is consequently less regime-threatening. Closer inspection indicates, however, that this norm also provides a potential gateway to intervention by extra-continental actors. Since the Brahimi Report of 2000, UN documents have argued that more robust rules of engagement and a flexible interpretation of the core principles would be needed to effectively protect civilians. Accordingly, consent does not empower conflicting parties to manipulate the implementation of the mandate, nor does impartiality imply that all conflicting parties be treated equally; rather, it means that force may be used both for self-defense and to fulfill the mandate (Holt et al., 2009). The Capstone Doctrine of 2008 called POC the "core business" of peacekeeping, and the 2009 UN "New Horizons" document emphasized both the robustness of peacekeeping missions and the significance of protecting citizens (Dembinski and Schott, 2014). Here, the UN further decouples the military measures it is responsible for from the consent of local governments. The HIPPO-Review of peacekeeping operations states that "Missions should protect civilians irrespective of the origin of the threat" (United Nations, 2015: 46.) Similar to the R2P logic, recent UN documents recognize the primary responsibility of the state to protect civilians but also a responsibility of the UN mission to step in:

> "However, in cases where the government is unable or unwilling to fulfill its responsibility, Security Council mandates give missions the authority of act independently to protect civilians. Bearing in mind that missions operate within the principles of peacekeeping and in accordance with the mandate, missions are authorized to use force against any party, including elements of government forces,

where such elements are themselves engaged in physical violence against civilians" (United Nations OCHA/DPKO, 2011: 3).[6]

Although African decision-makers were aware of the risks,[7] the AU backed the POC norm early and even drafted African POC guidelines in 2010, which envisage more robust engagement than UN documents. While a series of other AU missions were also meant to protect civilians in one way or another, the AU explicitly tasked the AU Mission in Sudan (AMIS) with this goal. The protection of civilians is also the priority in operational plans for the AU's intervention force (ASF) (Dembinski and Schott, 2014: 287).

Similar to the African appropriation of R2P, African states and the AU accepted POC provided they could control its application. Since the late 1990s, the AU has pursued two strategies to secure voice opportunities. The first foresaw the creation of a robust African Standby Force (ASF) of 20 000 troops that would provide African solutions to African problems. However, those plans quickly proved beyond African means, and the AU settled for a more limited capacity for temporary missions that could be quickly transferred to the UN or would allow the AU to assume an active part in UN operations (Coleman, 2011). However, the AU is willing to work with and rely on the UN only if the UN grants Africans a say on the implementation of robust peace-keeping and POC. In a report on the peacekeeping partnership between the AU and the UN, the AU urged that the UNSC "should give due consideration to the decisions of the AU and its PSC [Peace and Security Council] in arriving at its own decisions" (African Union, 2012b). Cooperation between global and regional organizations is to be informed by a new interpretation of Chapter VIII of the UN Charter as well as by principles including respect for African ownership and priority setting (African Union, 2013). In sum, the AU will accept robust peacekeeping missions in Africa only if extra-continental actors commit to consulting closely with African bodies and considering their concerns and interests when implementing the missions, even if African actors themselves can offer only few resources.

This expectation was tested during the Ivorian crisis. In autumn 2010, the country finally conducted overdue presidential elections. The vote was meant to re-integrate a nation that had been de facto divided as a result of civil war in 2002. The elections pitted Laurant Gbagbo, who had served as president since October 2000 and represented the communities and elites of the South, against his long-time challenger Ouattara, who represented various armed groups and political movements from the North. The second, decisive round of internationally monitored elections took place on 28 November 2010. Four days later, the Electoral Commission declared Ouattara as the new president with 54.1% of the vote. The following day, however, the President of the Constitutional Council and Gbagbo ally, Paul Yao N'dre, citing irregularities and fraud, invalidated 600 000 ballots from districts in the North and declared Gbagbo the winner.

The ensuing international diplomatic attempts to solve the crisis involved the UN, the AU, and the sub-regional Economic Community of West African States (ECOWAS). Authorized by UNSC-Resolution 1765 of 16 July 2007 to certify future elections, the Special Representative of the Secretary General, Young-Jin Choi, confirmed the count of the Electoral Commission (Hara and Yabi, 2013: 164). ECOWAS concurred and, at its meeting on 7 December, suspended Ivorian membership (ECOWAS, 2010). On 9 December, the AU followed suit (African Union, 2010b).

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[6] The 2015 HIPPO report also refers to this R2P logic (see United Nations, 2015b: 37).
[7] Sudanese President Bashir, for example, opposed the deployment of a UN mission to Darfur, fearing that it would curtail government-sponsored operations in the region (Franke, 2009: 120).

When Gbagbo balked and escalated the conflict by mobilizing militias and armed youth against Ouattara supporters, the seemingly united international front cracked. ECOWAS sent mixed signals. At its meeting on 24 December, it imposed sanctions and even told Gbagbo "to stand down or expect to face 'legitimate force'" (BBC News, 2015). This tough rhetoric, however, hardly hid that some members, worrying about the safety of their citizens in Cote d'Ivoire, were reluctant to use force and that ECOWAS' standby force was operationally unable to intervene (Institute for Security Studies 2011: 10). In the UNSC, Russia and others expressed reservations regarding Choi's early and public commitment in favor of Ouattara (Hara and Yabi, 2013: 64). Nevertheless, confronted with worsening violence, on 19 January the UNSC authorized 2000 additional troops for UNOCI. As to ways out of the crisis, however, the Council remained silent until March 2011.

At this point, the AU took center stage. The continental organization preferred a power-sharing agreement. This approach was advocated mainly by South Africa. President Zuma and his predecessor, Thabo Mbeki, were partial to Gbagbo. To explore a potential compromise, the AU dispatched Kenya's Prime Minister Odinga, himself a member of a power-sharing government. Odinga's mission failed. Gbagbo refused to meet after Odinga had criticized him sharply and insisted that the election results be recognized. After this setback, Zuma became personally involved. On 28 January 2011, the PSC charged a high-level panel, comprised of the heads-of-state of Chad, Mauritania, Burkina Faso, Tanzania and South Africa, to find a way out of the crisis. The dispatch of a South African naval vessel into international waters off Ivorian Coast was obviously a signal to Nigeria to stand-down and wait for the AU to conclude its mission, and it underlined Pretoria's eagerness to find a solution. Zuma and his counterparts began the mission hoping for some kind of power-sharing agreement to result. During the mission, however, they had to acknowledge three points. First, Zuma realized that the Constitutional Commission's case was not credible (Hara and Yabi, 2013: 167). Consequently, the panel's report, released on 10 March, did not call for a recount and instead confirmed Ouattara as the legitimate president. This implied that Ouattara would have to lead any power-sharing government. Second, Zuma and the other members of delegation eventually realized that Gbagbo would not accept a power-sharing agreement that favored his contender. In his 'after-action' report, the chairman of the Commission on the Situation in Cote d'Ivoire summarized the negotiations. According to his account, the panel requested Gbagbo cede power and accept a "National Union and Reconciliation Government" (African Union 2011c). The end game of the negotiations evolved during a PSC meeting in Addis Ababa on 10 March, to which both contenders had been invited. While Ouattara had travelled to Addis and accepted the AU proposal, Gbagbo refrained. His representative, Pascal Affi N'Guessan, rejected the proposed solution. Third, Zuma and the other heads of state recognized that time for a peaceful solution was running out. This was clearly articulated by the PSC at its meeting on 10 March, where it warned that security situation was rapidly deteriorating to a point where Cote d'Ivoire would "sink into widespread violence". Given this prospect, the PSC continued to search for a compromise that would "reconcile respect for democracy and the quest for peace", but otherwise confirmed the findings of the panel report and recognized Ouattara as president (African Union, 2011b). This was widely seen as evidence that the AU's search for a negotiated solution had failed and that it was time to revert to the UN. In New York, the diplomatic process accelerated quickly. By 25 March, France and Nigeria circulated a critical draft for Resolution 1975. On 4 April, Ban Ki Moon instructed UNOCI to use all necessary means to prevent the use of heavy weapons against civilian populations, while French and UN helicopters started coordinated attacks that eventually ousted Gbagbo.

Two conclusions from this episode are particularly noteworthy. First, although the African Union preferred the installation of a power-sharing government, it finally accepted the ouster of Gbagbo. The 'after action' report of the chairman of the Commission on the Situation in Cote d'Ivoire noted the AU's active role in the resolution of the crisis. The AU "should welcome this development "(…) and "fully play its rightful role in consolidating peace in Cote d'Ivoire" (African Union, 2011c 4f.). To the extent that procedural fairness allowed AU members to determine that UN-authorities and extra-continental powers were neither biased nor behaving incorrectly, that the decision-makers' information was accurate, and that the AU's preferred solution was failing, procedural fairness arguably explains the AU's acceptance of an outcome that deviated from its preferred solution.

Second, while this episode reinforced many African rulers' worries that the POC norm is no less risky than R2P, the AU and other African organizations and states redoubled their support for POC. Two developments confirm the impression that this protection norm is developing in the interstice between the global and the regional levels. First, the AU continues to recognize the concept and has deepened its cooperation with the UN. AU peace missions deployed after 2011, like the AFISMA mission in Mali, have been routinely equipped with a POC mandate. Second, African states and organizations acclaimed the progress toward more robust UN-peacekeeping by accepting a crucial precedent: the deployment of a new UN intervention brigade, a heavily armed combat force, in the Eastern part of the DR Congo (Cammaert, 2013). Therefore, it is evident that regional participation and involvement are vital to the regional acceptance of robust peacekeeping missions carried out by extra-continental actors in Africa.

Summary and implications for political practice

By way of conclusion, I will assess possible solutions to the puzzle and discuss what implications these findings might have for the broader global governance debate. I will begin with two sets of alternative explanations: case-specific and those derived from norm diffusion theories. One case-specific explanation focuses on both leaders' standing among their African peers. According to this explanation, Qaddafi, the self-declared African 'King of Kings' and financial supporter of many African regimes and organizations like the AU, was well respected and his ouster attracted sharper criticism than Gbagbo's (St John, 2003; Chhiba, 2011). This explanation clearly fails. Qaddafi indeed financed many regimes in Africa, but he also meddled constantly in the internal affairs of other states and financed vicious rebel groups. Due to this constant meddling and his abrasive diplomatic style, Qaddafi's African peers feared and loathed him more than they respected him (Beresford 2015: 292). By contrast, Gbabo had built a reputation as an African socialist who dared to stand up to French neo-colonialism. He also enjoyed the amity of many nationalist leaders, like Angola's President dos Santos (Hara and Yabi, 2013: 165).

The second case-specific explanation holds that, due to the strong African norm against unconstitutional changes of government, it was deemed to be more appropriate to depose the loser of an election than a leader guilty of atrocities against his own population in the midst of civil war. Originally conceived as a regional rule-set for regime protection against coups d'états, African states have also developed rules against ignoring the outcomes of democratic elections. However, established procedures for regional reactions to such unconstitutional behavior by no means envisage forced regime change. Instead, African regional organizations usually react by orchestrating a compromise (Witt 2012). Thus, South Africa's initial response to the Ivorian crisis adhered to established practices, and the ouster of Gbagbo was considered inappropriate.

With regard to norm diffusion theories, observation falsifies their core assumption that, prior to 2011, African and Western understandings of R2P and POC differed significantly. Both groups of states understood military intervention as a last resort. Moreover, the Gbagbo case refutes the presumption that Africans hold heads of state to be sacrosanct and always value regime security above human security.

However, both cases confirm the expectations of justice theory. African states and regional organizations initially accepted both emergent global norms conditional on the right to procedural co-determination. This condition for the acceptance of both norms was tested in 2011. During the Libyan crisis, the AU's demand for voice was denied. Thereafter, the AU criticized the implementation of UN Resolution 1973 as an act of neo-colonialism, acted stubbornly, and began to question established rules of application, though not necessarily the norm itself. In the Ivorian case, the AU was fully involved. Although the outcome deviated from the AU's preference, the organization and its leading states accepted the ouster of Gbagbo, conduced to post-crisis reconstruction, and continued to support the POC norm. Both cases are similar enough to serve as each other's counterfactuals and thus allow causal inferences. Combined, they demonstrate that the AU reacted with frustration and anger to the Libya intervention because procedural justice had been denied and reacted pro-socially to the intervention in the Ivory Coast because the demands of procedural justice had been fulfilled.

If corroborated by further research, these findings will have far-reaching policy implication. Any reform of the international order and its norms that redistributes obligations and restricts states' freedom of action will only be accepted if it reflects shared principles of distributional and, even more importantly, procedural fairness. In fact, many conflicts that seem to concern the meaning of norms in global governance actually concern procedural rights. As long as comprehensive UNSC reform to ensure procedural fairness is pending, this principally implies that affected local states and regional actors have a say in the application of global norms. The growth of regional security organizations reflects local actors' insistence on co-determination. Thus, devolving responsibility to the regional level is an opportunity rather than a risk for realizing global governance. The regionalization of global governance architecture, which participants of the founding conference of the UN in San Francisco already called for in 1944, is more pertinent than ever.

Acknowledgements

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