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# **Institutional Justice as a Condition for the Regional Acceptance of Global Order**

The African Union and the Protection of Civilians

Matthias Dembinski/Dirk Peters

Translation: Nick Gemmell

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Correspondence to:

PRIF · Baseler Str. 27–31 · 60329 Frankfurt am Main · Germany

Phone: +49 69 959104-0 · Fax: +49 69 558481

E-Mail: [dembinski@hsfk.de](mailto:dembinski@hsfk.de), [peters@hsfk.de](mailto:peters@hsfk.de) · Website: [www.prif.org](http://www.prif.org)

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## Summary

Recent conflicts over liberal conceptions of international order have reinvigorated the debate about the possibilities of global governance. Are liberal norms and rules such as the international Responsibility to Protect and criminal justice only accepted in the political West? Are they acceptable in the “global South” at best in an adjusted form? Moreover, what are the sources of these intensified debates about international rules which had appeared to be already firmly institutionalized at the global level in the form of formal institutions and informal obligations?

Two events that took place in 2011 illustrate what is at stake. In March that year the international community authorized military action to protect individuals from, allegedly, eminent human rights abuses by the Libyan government. The UN Security Council passed Resolution 1973 to that effect and, in doing so, drew on the idea of the responsibility to protect (R2P). Though serving as an early supporter of the R2P and likewise condemning the human rights abuses by the Libyan government, the African Union (AU) harshly criticized the approach taken by the intervening coalition that implemented the resolution. It denounced coalition actions as a form of neo-colonial intervention and went on to distance itself from the R2P norm. This episode marked a historical turning point as the AU had been the first non-Western regional organization that had decisively supported the R2P norm. At about the same time, UN forces were carrying out an intervention with the support of French troops in the Ivory Coast. Presidential elections there had contributed to the violent escalation of a power struggle between the incumbent president Laurent Gbagbo and his challenger Alassane Ouattara. The intervention, which eventually led to the overthrow and arrest of Gbagbo, was legitimized by a related protection norm: the obligation to protect civilians during peacekeeping missions (Protection of Civilians, POC). In contrast to the case of Libya, African regional organizations welcomed this intervention and continued to support the POC norm in the period that ensued.

Understanding these divergent responses by the AU to the application of presumably global norms will help in assessing the future possibilities for global security governance resting on a shared set of normative standards. The present report uses two lenses to examine the AU's responses. It first focuses on the relationship between global institutions and Regional Security Organizations (RSOs). Though the rapid growth of such organizations since the 1990s has often been dismissed, it has, in fact, established new structures in world politics. RSOs have come to take on a series of tasks on behalf of their members. They primarily serve as “amplifiers” that strengthen the position of their members in the continued development of global norms, and, concurrently, serve as “gatekeepers” for controlling the implementation of global norms in their constituent regions. The friction points between global institutions and regional organizations constitute the areas in which we can most readily observe conflicts about the norms of global governance. The role of RSOs in these conflicts is ambivalent. Are they leading to a fragmentation of the global order? Or should they be seen as building blocks of a world order that increase the opportunities for global governance?

The German federal government emphasizes the latter, the inherent potential of RSOs for supporting a global order. It insists that RSOs can contribute to creating stability in their regions, reducing the burden on Europe and other Western global powers. Consequently, the German government seeks to support the work of RSOs. Given the controversies surrounding the impact of RSOs on global norms, however, it is unclear whether this is a contribution to the stabilization or to the fragmentation of global order. What is central for resolving this issue is the question under what conditions regional actors accept emerging global organizations and under which conditions they reject them.

In approaching this question, we argue, secondly, that the regional acceptance or rejection of global rules by states is essentially a matter of justice. Global institutions are only accepted when they and the distribution patterns they generate are taken to be just by the affected states. In order to substantiate why international actors insist on the presence of just order and fair treatment and to uncover what justice actually means for the actors, we draw from the results of empirical research on justice. The substantive meaning of justice, i.e. what it means for a concrete actor to be treated in a just way, is informed to a considerable degree by historical and social contexts. At a basic level, however, some general criteria for justice can be identified, e.g. that equals be treated equally. Furthermore, there are two dimensions of justice that can universally be distinguished: distributive and procedural justice. While the former refers to the distribution of material and immaterial goods, risks and costs, the latter refers to the quality of the procedures that lead to decisions on such distribution. Procedural justice may, for example, require that those who are affected by a decision have a say when the decision is being made. Procedural justice can be considered the more decisive of the two because it can make decisions acceptable whose distributive effects are difficult to predict or evaluate.

We will illustrate the significance of justice, particularly procedural justice, within international politics by examining the aforementioned divergent reactions on the part of the African Union during the first application of both the R2P and the POC norms. These reactions cannot merely be explained by differences in the content of the norms or by their (mis)match with African traditions and interests. Rather, a justice-based approach points to the differing opportunities for participation that existed in both cases. While the AU was marginalized in the decision-making process for the military implementation of Resolution 1973, the subregional organization ECOWAS (Economic Community of West African States) and the AU both assumed important roles in deciding on military actions in the Ivory Coast.

This diagnosis has far-reaching implications for practice. A global order that is informed by liberal institutions must satisfy demands for justice in order to be acceptable. This does not only concern the distribution of burdens, risks, costs and benefits. It also includes possibilities for co-determination when norms are applied in concrete situations. From this perspective, involvement of regional organizations would not undermine the substance of a global order. On the contrary, the devolution of responsibility at the regional level increases the possibilities for global governance. The regionalization of the architecture of global governance, for which the founding conference of the UN in San Francisco had called already in 1944, seems to be more pertinent than ever.

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## **1. The paradox: divergent reactions to emerging global norms by regional security organizations**

Emerging global norms and rules<sup>1</sup> of liberal origin are not easily accepted at the local level. Two similar events in 2011 highlight the need to reconsider the relation between global norms and their local acceptance. As the present report argues, institutional justice must assume a more significant place in such a process.

In April of 2011, the UN Security Council passed Resolution 1973 with a large majority. Relying on the Responsibility to Protect (R2P) norm for the first time, this resolution authorized the use of force to protect people from grave crimes committed by their government – in this case Libya. This decision was initially supported by all regionally affected states on the Security Council. Following the vote however, the African Union broke with the consensus under the leadership of the non-permanent Security Council member South Africa and emphatically rejected the implementation of the resolution by a coalition of willing states. South Africa criticized their approach as a form of neo-colonial interference and went on to distance itself from the R2P norm.

At around the same time, a UN force supported by French troops stationed in the Ivory Coast appealed to a related norm: an obligation to the Protection of Civilians (POC) during peacekeeping missions. The intention here was to use military force to intervene in the violent power struggle that had emerged in the wake of the 2010 presidential elections. Incumbent president Laurent Gbagbo was to be removed from power and arrested and his challenger Alassane Ouattara was to be put in office. As in the case of R2P, the AU was involved in developing the POC norm from the beginning. However, this time, the AU continued to support the norm after it had been applied for the first time and would later refer to the POC in justifying the deployment and robust actions of a UN intervention force in eastern Congo in 2012.

The first situation was picked up by the press and intensely debated in academia. Indeed, Africa's change of course in the R2P case can be considered highly significant for the fate of global governance. Africa was the first non-Western region to embrace the R2P most clearly. Given that other regions remained skeptical of or even outright rejected the R2P, the entrenchment of the responsibility to protect in article 4(h) of the Constitutive Act of the African Union from July 2000 appeared to indicate that core liberal norms of global governance might also achieve recognition in the non-Western world. Consequently, Africa's turn away from this principle was taken to be a historical turning point in the debate about global governance. It appeared not only to herald the end of the R2P (Rieff 2011, see also Hofmann 2014:17; Benner et al. 2015) but also to represent the emergence of a front of resistance on the part of non-Western regions to principles of liberal

1 In what follows, we will use the terms norms and rules interchangeably, conceiving of norms as agreed-upon rules and not in their original sociological definition as expressions of moral necessities and largely unquestioned codes of behavior.

order. This skepticism was presumably confirmed by a similar development with respect to international criminal justice and the liberal norms associated with it. An arrest warrant issued for Sudanese president Al Bashir garnered intense opposition in Africa. It prompted the AU to give up its support for the International Criminal Court and even led to the establishment of an African version of international criminal justice. During the crisis in Libya, the AU explicitly requested its member states to ignore the arrest warrant against Muammar al-Gaddafi.

Might there be a pattern here? Is the African Union becoming the grounds and the instrument for resistance to a world order shaped by liberal institutions? Might African states and their regional organizations even have deliberately created the appearance of accepting liberal global norms for instrumental reasons and revealed their true positions once the norm was first applied in practice? The Ivory Coast case does, however, indicate that we are not dealing with such a pattern and that sweeping and pessimistic conclusions about African resistance to a liberal global order are premature. Reactions to the emergence of global norms on the part of local and regional actors have clearly varied.

What, then, affects the position of local actors towards global norms? In our case, the answer to this question needs to account for the variation in the African Union's behavior, i.e. explain why it initially supported two related global protection norms, only to distance itself from the R2P upon its first application while continuing to support the POC.

Both cases reveal an additional similarity. In both situations regional security organizations played a decisive role. Alex Bellamy and Paul Williams (2011: 847) have characterized the functions of the Arabic League in the case of Libya and that of the Economic Community of West African States (ECOWAS) in the case of the Ivory Coast as those of "gatekeepers": Their consent to the interventions allowed global protection norms to be implemented in the first place. This illustrates the rising importance of regional security organizations for the architecture of global governance. Since the end of the 1990s, many regional organizations whose focus had originally been on economic cooperation – such as the Association of South East Asian Nations (ASEAN) – have begun to develop their capacities in the area of security, while others – such as the Union of South American Nations (UNASUR) – have been created with the explicit goal of coordinating security policies (Kirchner/Dominguez 2011; Aris/Wenger 2014). According to a recent figure, over 30 RSOs currently deal with various aspects of maintaining security in their regions (Wallenstein/Bjurner 2015). According to the concept of 'new regionalism', their growth can be seen as a reaction to normative adjustment pressures, which have surfaced along with the restructuring of the global order from one of sovereign equality to that of a liberal peace. Bellamy and Williams's analysis is incomplete, however, because they only look at RSOs as facilitators. Regional organizations can surely be put to use by their members in order to take advantage of global norms. They can, however, likewise be employed in order to shield these states from normative pressures at the global level. RSOs are thus increasingly important as interfaces between the global and the state level. They can serve as instruments for their members to influence normative developments at the global level. And they can function as filters that allow, deny or adjust to the implementation of global



rules. As such, our two-sided puzzle is representative of a more general question: Under which conditions do RSOs accept and serve as the building blocks of emerging global norms and under which conditions do they stand in opposition to such norms, thereby acting as barriers to global governance?

We argue that justice plays a key role in this process. At first glance, it might appear far-fetched to assume that an empirically oriented theory of institutional justice could clarify our current puzzle and, moreover, increase our understanding of conflicts involving global norms and their regional validity. Such a theory has not been developed as of yet. In marked contrast to exhaustive research in the area of political theory and the new sub-discipline of international political theory (Wisotzki 2013), there exist, at best, only a handful of studies that focus on international justice from an empirical perspective (Welch 1993; Müller/Druckman 2014). Even though the term justice has made an appearance in nearly all keynote speeches addressing the global order, it remains unclear what the term implies for world politics, whether a shared understanding of justice exists, and whether it is something that motivates the actions of political decision-makers and is a goal that they actively pursue. The situation in the neighboring fields of social psychology, organizational research, experimental economics and evolutionary research is quite different. Empirical justice research is firmly established in these disciplines. Here, countless experiments and comprehensive field research have shown that the actions of individual actors are not merely dictated by their short-term interests or cost-benefit calculations but equally by their desires for justice. Even though these findings cannot simply be carried over to the area of international politics as is, the development of an international theory of institutional justice may stand to benefit by borrowing from research in neighboring disciplines.

Against this background, the present study has two primary goals. First, it intends to establish a basic conception of international institutional justice by drawing from empirical justice research carried out in other disciplines. Second, it aims to demonstrate that such a conception can lead to a more complete understanding of how regional actors relate to norms for global governance.

This theoretical perspective on the politics of order entails far-reaching political implications. They concern the modalities of political control efforts, in general, and the relationship between global and regional structures of order, in particular, which is currently intensely debated. In its official position, the German Federal Government has emphasized the inherent potential of RSOs for establishing global order. At the Commanders' Conference at Strasbourg in October 2012, for example, Angela Merkel stated that NATO and the EU could not alone solve all the problems related to security. Regional powers, especially regional organizations, should acquire more responsibility and be enabled to

more effectively assume this role.<sup>2</sup> Based on a German initiative, the European Council took up this suggestion in a consultation on EU defense policies in December 2013. It subsequently passed the Enable and Enhance Initiative (E2I) that aims at strengthening the capacities of other regional organizations in the area of conflict prevention (Puglierin et al. 2014). The EU can thereby expand its existing programs that support organizations such as the African Union. These include its African Peace Facility (APF) through which the AU's peacekeeping missions are co-financed. It might appear that through such mechanisms extra-European regional organizations (e.g. the AU) allow themselves to be instrumentalized in order for the West to more efficiently attain its goals. Upon first inspection, such a view might have some merit. Why would Germany and the EU support strengthening RSOs if this entails limiting European influence and making way for solutions to regional problems that do not accord to European views? In contrast, institutional justice would deem such an instrumentalized understanding as short-sighted. Instead, and in accordance with the central argument of this report, RSOs can best contribute to stabilizing the global order when they are fairly involved in this order.

## **2. The explanation: procedural justice as the key to understanding the possibilities for global governance**

### **2.1. Conventional explanations for the regional acceptance of global norms: theories of socialization and localization**

In order to clarify the specific perspective and special contribution of empirical theories of justice to global governance research, we will first briefly introduce the theories of socialization and localization – two theoretical concepts that have thus far dominated debates on the local recognition of global norms. Adherents of socialization theories take modern, successful and efficient actors to be the driving force lying at the core of the implementation of global standards. Socialization theories relativize earlier assumptions of an automatic diffusion of efficient and modern forms of organization by placing more weight on the influence of actors and on the significance of instrumental action. In the end, however, structural factors tend to be decisive for the success of socialization. Besides the attractiveness and the strength of the agents of socialization – i.e. their ability to create

2 See: Rede von Bundeskanzlerin Angela Merkel anlässlich der Tagung des zivilen und militärischen Spitzenpersonals der Bundeswehr in der Akademie der Bundeswehr für Information und Kommunikation, 22 October 2012, available at: <http://bit.ly/1gMbfZW> (18 November 2014). Merkel made a similar statement during a press conference at the European Council in December 2013. She expressed the goal of “working towards a situation in which European states would not always have to intervene on their own but rather enable regional organizations so that they may support security in individual regions” (press conference of Chancellor Merkel at a meeting of the European Council, 20 December 2013; our translation).

positive or negative sanctions – it is the normative match between the new norms and the existing local practices and thus the cost of adjustment which affects the success of socialization (Checkel 2005: 806–808). In this context, the mode of socialization extends from strategic calculations through role playing all the way up to persuasion (Schimmelfennig 2002: 11–13). Despite attempts to develop more differentiated concepts, representatives of this theory ultimately adhere to a linear process of norm diffusion, a process that progresses from inception through a gradual dissemination and up to a certain tipping point. Thereafter, norm entrepreneurs carry the process forward by way of strategic engagement until those targeted finally internalize the norms (Finnemore/Sikkink 1998; critique: Daase 2013).

In contrast, localization theories – particularly those developed by Amitav Acharya – place greater emphasis on the character of actors, such as the autonomy and strategic capabilities held by the objects of socialization efforts. Local actors have been shown to respond both creatively and instrumentally to global norms. Depending on how global norms relate to a ‘cognitive prior’ (Acharya 2004) – namely, the preexisting traditions, mentalities and interests (of the elites) –, local states will reject them, accept them or adjust them to their needs.

Though both theories take differing stances on the assertiveness, autonomy and creativity possessed by agents and objects of socialization, they agree on two central points. The normative match – the accord between the contents of global norms and local traditions and interests – is considered to be the essential condition for either acceptance or rejection. Furthermore, total acceptance is viewed as improbable. Whereas localization theories assume that adjusting norms to existing local traditions and practices is a more likely outcome, socialization theories argue that strategic adjustment and role playing are, at least in the first stage of the process, more likely than internalization. The differentiation between the substance of a norm (in terms of the general and abstract rules it embodies) and its application in a concrete situation is also prominent in recent research on norms. This research has demonstrated that conflicts typically break out when abstract rules are applied in practice. When such disputes relate to the question of application itself – whether or not the rules suit the practical case – they will usually result in specification of the rules. Should, on the other hand, disputes of application uncover hidden differences in regards to definitions of the general rules, the norm may very well break apart (Betts/Orchard 2014). Applied to the African position towards R2P, both approaches would argue that the markedly negative reaction to the norm’s first application highlights clear differences in the interpretation of what R2P actually entails. Accordingly, though the AU paid lip service to R2P early on for its own, and assumedly, instrumental reasons, its member states held a fundamentally different understanding of the concept compared to their Western counterparts who implemented Resolution 1973. Localization theories would presume the existence of differences over the content between the AU and the international community with respect to questions of sovereignty – particularly in relation to the issue of whether the R2P can legitimize emergency measures against incumbent governments that do not meet their obligation to protect. Applied to the African position towards the POC, both approaches would argue that the match between the definition of global norms and local traditions and interests was better, and, accordingly, that

the first attempted application of the norm served to specify mutual understandings of its contents. Differing reactions to both norms on the part of the AU would be explained by their content and integrability in relation to local interests.

## **2.2. Empirical justice research as a basis for a theory of institutional justice in international relations**

As touched upon in the introduction, empirical justice research emerged within the area of social psychology in the 1950s, and subsequently gained a foothold in other areas of the social sciences such as organizational research and experimental economics. This research focuses on perceptions of justice in social relations and institutions. It starts out from a conception of justice as a particular distribution of goods and rights: A just distribution is one that accords actors what they deserve. Moreover, justice means that equals are treated equally and unequals unequally. Accordingly, injustice lies in the arbitrary, unequal treatment of equivalent demands as well as in the difference between agreed-upon rules and actual conduct. Unlike philosophy, empirical justice research is not interested in developing well-reasoned standards of justice. Rather, it examines what real-world actors perceive as just or unjust and how this affects their behavior. We cannot elaborate here on the current status of this line of research in any depth but will only briefly highlight three central findings that are important for informing research about institutional justice in the international realm.

First, social psychological research – particularly the work by John S. Adams and the equity theory that he developed – demonstrates that the justice motif can be isolated from interests. Actors do not only follow direct cost-benefit calculations. Rather, perceptions of justice likewise have an influence on their actions (Adams 1965). Justice, and especially the recognition of injustice, even motivate actions to a particularly large degree. A perception of justice is closely related to socially oriented behavior and encourages the willingness of individuals to voluntarily contribute to the production of collective goods. Actors often respond to perceived injustice through negative actions such as protests, refusal to cooperate, sabotage and depression. In short, the behavior of real people does not correspond to the assumptions made by models of rational and self-interested actors developed by economists. Rather, people appear to be a hybrid species, “a cross-breed of *H. economicus* and *H. emoticus* [*italics in the original*], a complicated hybrid species that can be ruled as much by emotions as by cold logic and selfishness” (Sigmund et al. 2002: 84).

Second, empirical justice research has come up with different explanations for why justice is a central concern for individuals. One model starts from the assumption that self-interested actors are dependent on cooperation in order to achieve their goals. According to this model, justice is a shared standard that allows the members of a community to socially organize themselves in such a way that they may maximize their utility by acting as competitors in cooperation with others. As such, justice is important in so far as it regulates social interactions (Tyler/Smith 1998: 612). According to a second model de-

veloped by Tom Tyler and Allan Lind on the basis of social identity theory, justice is defined as a standard that offers those involved the relevant information about their social status within a given group. This group-value model assumes that actors value social recognition and assess their status within a group based on how others, particularly authority figures, treat them. It is, of course, doubtful whether these models can be neatly separated when they are applied to empirical phenomena. Experimental economics show that individuals oppose unfair treatment even when this proves adverse to their short-term interests. They suppose that protest serves to maintain their feelings of self-worth, as suggested by the group-value model. But research further indicates that this need to protect feelings of self-worth is part of a behavioral program through which actors arm themselves against the risk of future exploitation by self-interested others. "From an evolutionary viewpoint, this self-esteem is an internal device for acquiring a reputation, which is beneficial in future encounters" (Sigmund et al. 2002: 85).

Third, and especially interesting for us, empirical justice research establishes a difference between two dimensions of justice: distributive justice and procedural justice. Distributive justice exists when members of a social group are convinced that the allotment of a given good within the group corresponds to standards shared by the group. This need not necessarily be a standard of equality. Distributive justice can also be based on standards of need, of seniority or of the proportion of effort. Justice is realized when the *sum cuique* principle is satisfied, when each person receives their deserved share. Procedural justice is a characteristic of the decision-making processes that leads to the distribution of goods. The pioneers of research into procedural justice, social psychologist John Thibaut and lawyer Laurens Walker, investigated the conditions under which judicial proceedings and the resulting judgments were deemed as fair by those concerned. In more general terms, procedural justice refers to the fairness of the processes of applying a general rule (the law) to a concrete case. Thibaut and Walker assumed that the so-called "process control" (or "voice") of those affected increases the acceptance of a judgment. Here, process control refers specifically to "control over the development and selection of information that will constitute the basis for resolving the conflict" (Thibaut/Walker 1975: 546). The prescriptive model developed by Gerald Leventhal is even broader (1980). Leventhal developed a catalog of qualities that any given procedure must fulfill in order to be deemed fair. These include consistency in the application of general rules, the impartiality of decision-making bodies, and the accuracy of information flowing into the procedure.

In sum, this research finds that perceptions of injustice can surface at two points: either a general rule or an isolated decision made on the basis of that rule can be found to be unjust. In established communities at least, justice disputes relating to general rules are rather unlikely and justice conflicts will generally revolve around individual decisions. This is not all too surprising considering that conflicts over application are not only more frequent but also more complex. In each case, a decision must be reached as to which rule should be applied and what it prescribes in that concrete case. When judging the justice of an individual decision, those concerned not only evaluate the distributive effect of that decision on the basis of their conceptions of just allotment but likewise the procedure that led to that decision. The affected parties are more likely to accept a concrete judgment when they perceive the procedure involved in making that decision as fair. Subsequent

empirical studies confirmed the assumption that procedural justice operates independent of outcomes. Evidently, justice deficits in the distributive dimension can be compensated for by strengths in the procedural dimension (Greenberg 1990: 406).

Overall, then, empirical justice research postulates that people are evolutionarily out-fitted with a perception of justice. This allows members of a community to acquire and share specific standards of justice and permits interactions among members of this community to operate free of friction. The recognition of a concrete distributive decision as being just or unjust not only depends on the distribution itself but also on the fairness of the procedure that led to this decision.

Can the results of this research, which focus on the behavior of individuals, be transferred to the inter-state arena? This will depend on the answer to two questions: (a) Do dispositions and perceptions of individuals influence the behavior of large groups and of states? How reliable are the mechanisms of transfer from the individual to the group level?; and (b) Given that justice is a shared standard within communities, why would representatives of states apply justice standards in inter-state relations even though the level of cultural and social integration within the international system is markedly lower than within historically evolved communities?

The first question is currently being extensively discussed in the theory of international relations by research that examines the broader significance of individual dispositions and experiences – such as emotions (Mercer 2010; 2013), humiliation (Saurette 2006) and respect (Wolf 2011; Ward 2013) – for state behavior. This research has highlighted two causal mechanisms for the transfer of individual dispositions to state behavior. First, decision makers can conceive of the state system as a social system and determine the status of their own state based on how it is treated by representatives of other states. Second, members of a large group or state who identify with that group or state may project the existent individual and acknowledged justice principles onto relations between larger groups or states. Socio-psychological justice research has also produced empirical indications that individuals transfer perceptions of justice onto large social groups and that they hold expectation that their own social groups will be treated justly in relation to others.

Empirical justice research also offers answers to the second question. Field research has already confirmed the assumption that justice carries universal significance but that concrete expectations related to justice are shaped by communal experiences (Henrich et al. 2004). The current state of research on the question of whether justice is universal or culturally determined has been summarized by Tom Tyler and Heather Smith (1998: 619): “Most studies support the suggestion that justice is important across cultural settings. However, this research also suggests that people do not necessarily define justice in the same way.” Research has, however, also shown that the boundaries of communal perceptions and expectations of justice can neither be definitively demarcated nor are they immutable. On the one hand, communities draw a distinction with respect to the people whom justice must serve, members of the group or outsiders. This differentiation is not, however, absolute and communities are prepared to afford justice to outsiders, though perhaps to a lesser degree than to insiders. They are less willing to share communal goods but do take the basic rights of outsiders into consideration. On the other hand, the

boundaries of justice vary based on the social interactions involved. It seems quite likely that globalization is shifting the boundaries of where people are aware of and expect justice. Justice is gaining in significance as a global and inter-state phenomenon due to an increase in transnational interactions and externalities.

In sum, there is good reason to believe that the justice motif is increasingly playing a role in interactions between states; that states expect to be treated justly by other states, i.e. that they expect to receive what they are entitled to; and finally that individuals can also be recognized as subjects of justice in inter-state relations. At the same time, however, one can rightly expect shared perceptions of justice within the international arena to be weaker than in culturally homogenous communities that have historically evolved. In the national arena, shared expectations of justice represent a resource that allows conflicts about individual decisions to be resolved discursively. In the international arena, justice disputes over the distributive effects of single decisions are far more likely to impact the rules informing these decisions. This makes the procedural dimension all the more crucial and renders the acceptance of general rules all the more dependent on procedural fairness.

Given these findings, how would empirical justice theory interpret our cases? The starting point here would also be the difficulty of moving from the general rule to its application in an individual case. The application is particularly meaningful in the cases of R2P and POC. When applied they can have significant impact on states because they limit the rights of states in varying ways. Moreover, as they are still young norms, their interpretations are not yet settled and every instance, in which they are applied will contribute to how they will be interpreted in the future. Unlike socialization and localization theories, justice theories do not assume a straightforward link between the contents of a norm and its application. Rather, an abstract rule can be differently applied to a concrete case. The procedural dimension is variable. Whether or not a decision in a case is accepted will be significantly affected by how fair the procedures of application are perceived to be.

A justice-based explanation of our cases would entail two expectations. First, we would expect that the AU placed particular importance on procedural aspects during discussions regarding both the R2P and the POC. Second, we would expect that the different reactions of the AU in both cases did not – or at least not primarily – have to do with the contents of the norms, i.e. with any underlying differences between the AU and the international community as to their meaning, but rather with the differing opportunities for AU participation. Where the AU sees itself unfairly excluded from decision-making over how a general rule is applied in a concrete case, dissatisfaction with the unfairness of the treatment should become visible in the AU's rhetoric, in defiant behavior and a dissociation from the content of the norm in question. Where procedures for deciding about the application of a norm are considered fair, in contrast, this would be expected to increase the norm's acceptance among African states.

In the following section, we investigate the reactions to both protection norms by African states in order to determine whether the differing reactions are better explained by the normative match, as suggested by socialization and localization approaches, or by perceptions of procedural fairness, as justice theory would hold.

### 3. The cases: justice theory and the African Union's position on global protection norms

#### 3.1. The African Union and the Responsibility to Protect

As mentioned in the introduction, the African Union incorporated the idea of the responsibility to protect in its Constitutive Act as early as July 2000. Article 4(h) of this unusual document grants the Union the right to intervene during serious crises in a member state, such as defending against war crimes, genocide and human rights violations. Should unanimity minus one not be achieved, a decision to intervene is made by the AU General Assembly through a two-thirds majority vote by the member states – without the government in question holding a veto right. This indicated that the establishment of the AU in 2001 as the successor organization to the discredited Organization for African Unity (OAU) was accompanied by a normative shift from a culture of non-intervention to one of non-indifference (Murithi 2009; Williams 2007). It appeared that Africa and African states were not only accepting Western norms but also that a normative shift in the global order from one based on state sovereignty to one based on principles of liberal peace was actively being promoted by the new organization. Some observers optimistically commented that the R2P was a “norm born out of Africa” (Williams 2009: 397).

The AU's acknowledgement of the responsibility to protect certainly was surprising. For one, the OAU had previously emphasized traditional principles such as non-intervention, sovereignty and *uti possidetis*, compromising with the power interests of African potentates. And, secondly, many African states continued to be ruled by authoritarian regimes and, due to inherent weakness and diverse internal conflicts, had the potential to quickly become the sites of serious conflicts and the targets of humanitarian intervention. By accepting the responsibility to protect and the associated dismantling of normative protections against external intervention, AU member states were willingly accepting these risks. Given the inequality between African states that were the potential objects of humanitarian protection and those states with the military capacity to intervene, this represented a dangerous gateway for external interventions on the African continent.

Consequently, article 4(h) was much debated during the founding of the AU and a number of states continue to hold a skeptical position towards the new principle. The fact that this departure from the principle of state sovereignty was successful at all is tied to the shock of the situation in Rwanda. Foreign policy elites and many African decision-makers came to two conclusions as a result of the genocide: First, a crime of this sort could never be repeated and, second, Africa could not count on the international community to take quick military action when it came to protecting the lives of Africans. Additionally, South Africa and Nigeria also actively contributed to the shift. The governments of both countries came to promote the establishment of liberal norms in the AU's constitution based on their own convictions and on strategic calculations. Supporting the



shift helped them to demonstrate the liberal leanings of their policies to both their populations and international observers (Tieku 2004). In order to make the R2P more palatable and to pass it against opposing opinions, they appealed to the existing continental norms of Pan-Africanism and traditional expectations to demonstrate solidarity with oppressed African brothers (Adebajo 2010: 417; in summary see Dembinski/Schott 2014: 371–74; for a background on African decision-making processes see Williams 2011: 155).

The African protagonists of the responsibility to protect did, however, make their acceptance dependent on one central condition. They insisted that the African Union alone would decide on the application of the protection norm in Africa, and not the international community or the UN Security Council. Article 4(h) explicitly granted the right of intervention to the AU, not to the UN Security Council. The Ezulwini Consensus from 2005, through which the AU prepared its position for the World Summit, reinforced support for the R2P but likewise insisted that only regional organizations would decide on interventions in their respective regions. Agreement from the Security Council was desirable but could be granted “after the fact”.<sup>3</sup> This condition also is linked to elements of an African security culture, namely the concept of Africa establishing its own peace. Against the background of colonialism and neo-colonial interventions, this concept draws a normative distinction between interventions in Africa by African and by extra-continental powers. The latter were deemed as illegitimate and the former as legitimate so long as they served Pan-African interests (Mazrui 1967: 203f). Interventions by extra-continental powers were considered problematic since they could lead to foreign domination and exploitation. Accordingly, giving the AU’s decision priority was originally designed as a defensive move. The purpose was not to prohibit extra-continental powers from intervening to protect against grave human rights violations altogether but rather to enable African participation and control capacities in order to prevent potential abuses of interventions. Though the AU did acknowledge the principle of R2P and accepted the fact that extra-continental assistance would be necessary to protect African lives, it also insisted on controlling this extra-continental assistance. Along with this, the condition also had an enabling function. It was designed to ensure – against the background of the Rwanda experience – that Africa could solve its problems on its own without international support, which it deemed to be unreliable, and without a mandate from the Security Council.

In practice, recognition of the responsibility to protect did certainly remain inconsistent after 2005 and the AU continued to maneuver between the principles of non-indifference and non-intervention. African states rarely managed to find a unified position in ensuing crisis situations. Though their reaction to the crisis in Darfur reflected a new sensibility towards abuses of power by states, it also revealed existing reservations in taking action against incumbent governments or calling out their crimes (Kieh 2013). In response to the crisis in Libya, three positions formed: South Africa, Nigeria, Rwanda, Ghana and, to a certain degree, Tanzania and Benin were the supporters of the R2P, the Arabic States in North Africa along with Zimbabwe comprised the opposing camp, and

3 Ext/EX-CL/2 (VII) (2005), B.i.

the rest of the states positioned themselves somewhere in the middle of these two poles (Williams 2009: 414f). Yet (when disregarding the camp of radical critics that held marginal positions in the development of the R2P as well as in decision-making about the response to concrete crises), differences in interpreting the R2P among AU member states were hardly any greater than those within the EU. In sum, the Responsibility to Protect as it is codified in the AU Constitutive Act represents a compromise between conflicting interests, requests and concerns. There is, however, little to suggest that accepting the shift from the principle of non-intervention to that of non-indifference was instrumental in nature. On the contrary, the African conception developed in accordance with the normative shift in the global order.

This attempt to establish the Responsibility to Protect and to use procedural mechanisms to minimize the risks of exploitation was put to the test during the crisis in Libya. As violence on the part of the Libyan government against its populace escalated in February 2011, the AU stood in line with the international community. When announcing its first official position on 23 February, the Union sharply criticized the actions of the Libyan government.<sup>4</sup> As the conflict assumed the contours of an armed confrontation between the Gaddafi 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 envisaged an immediate end to the fighting, the introduction of international humanitarian aid, the protection of civilians and African “guest workers”, and the commencement of negotiations between the conflicting parties in regards to political reforms and the country’s democratization.<sup>5</sup> The three African countries with a seat on the Security Council – South Africa, Nigeria and Gabon – supported Resolution 1970 without reservations. After an initial period of hesitation, South Africa decided to also support Resolution 1973 on 17 March 2011, therewith ensuring a majority for the resolution as the two other African states followed Pretoria’s lead (Adler-Nissen/Pouliot 2014: 904). Representatives from the African states reasoned that the no-fly zone would protect civilians. Moreover, this would create additional diplomatic pressure on Gaddafi’s regime and strengthen the AU’s position as a mediator as well as the possibilities for negotiating a peaceful resolution to the conflict. To achieve this, the AU put together a high-ranking ad hoc group at the meeting on 10 March that was set to travel to Libya and initiate talks. Up to this point, the African states along with the AU found themselves sharing the international consensus of implementing the R2P in Libya and were apparently also in accordance with the views of the Western initiators of Resolution 1973. The latter even approved a passage in paragraph 2 of the resolution explicitly mentioning the planned dispatch of an AU delegation to Libya with the goal of finding a peaceful resolution to the crisis.

Accord between the AU and the initiators of Resolution 1973 gave way to dissonance as soon as the first bombs fell on 19 March 2011. The coalition of willing states had closed

4 African Union, Communiqué of the 261st Meeting of the Peace and Security Council, PSC/PR/COMM (CCLXI), Addis Ababa, 23 February 2011.

5 African Union, Communiqué of the 265th Meeting of the Peace and Security Council, PSC/PR/COMM.2 (CCLXV), Addis Ababa, 10 March 2011.

Libyan airspace, thereby blocking the AU's mission. Once the ad hoc group was finally able to enter in April, it became clear that their negotiation recommendation did not fail on account of opposition from Gaddafi but rather from the National Transitional Council in Benghazi. According to their interpretation, the air war had consolidated the dismissive position of the rebels. The Transitional Council had gained military high ground due to air support from the coalition and now hoped that they could win the conflict militarily. The coalition's official position and the way that it had conducted military action proved that this hope was not ill-placed.<sup>6</sup> The clearer it became that the coalition's intervention would de facto lead to a forced regime change, the more the AU distanced itself from the coalition and became disenchanted with the R2P principle it had supported before.

Reactions to the intervention in Libya by African states clearly brought existing differences to the fore. While Nigeria and Rwanda seemed to harbor a degree of understanding for the coalition's actions, rejection was the most pronounced in countries such as South Africa and Uganda.<sup>7</sup> More important, however, were the similarities. A large majority of AU member states were in agreement that African rights had simply been ignored and that their efforts to find a peaceful solution were undermined through the actions of the coalition.

Taken together, these observations do not support the assumption that the AU and Western backers of the R2P had drifted apart after the crisis in Libya due to any underlying differences as to the content or meaning of the protection norm that would have surfaced upon the norm's first application. The crisis in Libya certainly did, again, demonstrate the existence of African reservations regarding military action against established governments (Omorogbe 2012). However, the critics of intervention by the West were not opposed to Gaddafi's overthrow in principle. African nationalist and Ugandan President Yoweri Museveni stressed the right of the Libyan opposition to resist, merely criticizing the interference by extra-continental actors. As the leading voice in the AU mission, it was also South Africa's diplomatic intention to bring about Gaddafi's departure by making use of the road map (McKaiser 2011). As such, the AU's recommendation for resolving the crisis was operating within the boundaries of what one might have rightly expected to also be the basis of a Western understanding of the R2P in a case such as this.

The decisive root of the conflict was the way in which Resolution 1973 was implemented and how this served to marginalize the AU. With their right to participation and control ignored and the AU's efforts undermined, perceptions held by African actors were reflected in harsh and defiant reactions as well as statements by leading AU representatives and countries such as South Africa. This sheds light on the significance of the justice motif and the awareness of unjust treatment.

6 Global Centre for the Responsibility-to-Protect: Libya and the R2P, Occasional Papers, October 2012: 12f.

7 See Paul Kagame, Intervening in Libya Was the Right Thing to Do, *New African*, 1 May 2011.

Statements by African leaders clearly illustrate that they took exception at 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 he also accused coalition members of having a hidden power agenda.<sup>8</sup> Just before the end of the conflict, he criticized double standards in the West's treatment of covert military assistance: "Sometimes, when they [i.e. mercenaries in Libya] are white [and stand on the side of the Transitional Council], they call them 'technical advisors'."<sup>9</sup> Museveni argued that "Western countries always use double standards. Their actions [...] are emphasizing that might is right".<sup>10</sup> South African presidents Zuma and Mbeki criticized that the states possessing the military power to bomb deliberately undermined African peace efforts; they used their advantageous position to abuse the implementation of Resolution 1973 and to marginalize the AU.<sup>11</sup> In a speech before the UN Security Council, 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 African states had not been treated according to the unbiased interpretation of a general principle but according to the idea of "might is right"<sup>12</sup>. The South African president not only criticized the lack of respect for international law on the part of the coalition but particularly the breach of the African right to self-determination. In his view, arbitrary and unfair treatment was so pronounced in the case of Libya that he referred to it as having set a "very dangerous precedence", rhetorically asking "which African country will be next?"<sup>13</sup> A similar critique could be found in a public statement signed by over 200 African intellectuals, stating that the Security Council had allowed a coalition of powerful and willing states to usurp the implementation of Resolution 1973 and undermine the AU's road map. Thus the Security Council had supported "the immensely pernicious process of the international marginalisation of Africa even with regard to the resolution of the problems of the Continent".<sup>14</sup> At 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."<sup>15</sup>

8 BBC News: African Union 'Ignored' Over Libyan Crisis, <http://bbc.in/1T6yVUp> (accessed 26 November 2014).

9 As quoted by Tull/Lacher (2012: 9).

10 Yoweri Museveni: Libya Needs Dialogue, March 2011, available at <http://bit.ly/1Dwx1e5> (accessed 18 November 2014).

11 Mbeki: We Should Learn from Libya's Experiences," Mail & Guardian Online, 5 November 2011, available at: <http://bit.ly/1ST8eYG> (accessed 18 November 2014); Zuma lashes Nato for 'abusing' UN Resolutions of Libya, Mail & Guardian, 14 June 2011, available at <http://mg.co.za/article/2011-06-14-zumalashes-nato-for-abusing-un-resolutions-on-libya/> (accessed 18 November 2014).

12 Mbeki, Thabo: International Law and the Future of Africa, address at the AGM of the Law Society of the Northern Provinces, Sun City, 5 November 2011, available at: <http://bit.ly/1eUXAhc> (accessed 18 November 2014).

13 Ibid.

14 Open letter by "concerned Africans" condemning intervention in the African nation, August 2011, available at: <http://bit.ly/1IYRCdp> (accessed 18 November 2014).

15 Over 200 African Leaders: NATO's Libyan War Part of Plan to Recolonize Continent. Global Research, 25 August 2011.

Perceptions of unfair treatment also led to defiant policies by the AU and African states. As the first expression of its frustration, the AU refused to participate in the Libya Conference on 29 March 2011 that was organized by the coalition as well as the corresponding Libya Contact Group, thereby denying itself the opportunity for further influence (de Waal 2013: 371). In a clear step further, on 1 July, the AU recommended that its member states ignore the international arrest warrant set for Gaddafi.<sup>16</sup> The AU defiantly refused to recognize the National Transitional Council as the representative for Libya until Gaddafi's death on 20 October 2011. Observers were baffled over what they perceived to be a low level of rationality on the part of the AU and South Africa, characterizing their behavior as "stubborn", "obstinate" and increasingly unsustainable within the African Community (Tull/Lacher 2012: 8f).

Ultimately, African critics have demanded a reassessment of the exploitation risk inherent in accepting the responsibility to protect (Zähringer 2013) and have been exercising harsher criticism over the contents of the norm. This distancing manifested itself in South Africa's position towards the crisis in Syria. During discussions regarding UN Draft Resolution S/2011/612 in October 2011 – which starkly condemned the use of force by the Syrian government –, South Africa abstained arguing that that Resolution 1973 had previously been abused.<sup>17</sup> African representatives demanded that either the AU's procedural rights be strengthened along with other regional organizations or that the AU review its stance towards the R2P (Hofmann 2014: 24).

### **3.2. The African Union and the protection of civilians during peacekeeping missions**

The Protection of Civilians (POC), as one of the goals of peacekeeping missions, gained attention in international discussions about peacekeeping reforms since the mid-1990s. Initiated by the International Committee of the Red Cross and further developed by various UN bodies – particularly the Office of the High Commissioner on Human Rights (OHCHR), the Department for Peacekeeping Operations (DPKO), the Department of Field Support (DFS) and the Office for the Coordination of Humanitarian Affairs (OCHA) –, the UN used this concept to respond to the increasingly multi-dimensional character of peacekeeping missions in domestic conflicts as well as to the shift from state-centered understandings of security towards an understanding committed to the principle of human security. The UN Assistance Mission in Sierra Leone (UNAMSIL) in 1999 was the first UN mission with the explicit mandate of protecting civilians. Since then, fourteen additional UN missions have operated under the POC mandate. However, the UN has still not been clear about what the protection of civilians means concretely, about which measures this concept requires or about the degree to which it transforms the concept of

16 African Union opposes Warrant for Qaddafi, New York Times, 2 July 2011.

17 See UNSC/PV.6627: 11.

peacekeeping missions. In the interest of protecting citizens, the Brahimi Report<sup>18</sup> had called for a more robust form of peacekeeping. This was not meant to replace the three traditional guidelines for peacekeeping operations (consent from the conflicting parties, impartiality, non-use of force) but to reinterpret them. Accordingly, a demand for consent would not imply that conflicting parties may manipulate the implementation of the mandate, nor would impartiality imply that all conflicting parties be treated equally; rather it would mean that an operation's obligation towards the mandate and the use of force serve both the purpose of self-defense and of upholding the mandate (Holt et al. 2009). A recent concept document by the UN, while not specifically defining POC, describes it as a three-stepped approach that aims at initiating the political peace process, at protecting civilians from physical violence and at creating a benign legal and humanitarian environment (United Nations DPKO/DFS 2010).

At first glance, it would seem that the AU is more open to the content of this norm because it is closely connected to traditional forms of peacekeeping. In contrast to the R2P, it tends to be based on the consent of local governments and, consequently, is less regime-threatening from the viewpoint of local political elites and respects local interests and traditions. Upon closer inspection, however, this norm also proves to be a potential gateway for interventions by extra-continental actors. The shift in the doctrine of peacekeeping goes far beyond cosmetic adjustments. The so-called Capstone Doctrine, formulated by the UN in 2008, has called POC the "core business" of peacekeeping and the 2009 UN "New Horizons" document has emphasized both the robustness of peacekeeping missions and the significance of protecting citizens (Dembinski/Schott 2014). Here, the UN continues further down the path of decoupling the military measures it is responsible for from the consent of local governments. One framework document from 2011 recognizes that the primary responsibility to protect civilians lies with the state in question but also goes on to formulate the particular responsibility of the UN mission when the government cannot or does not live up to this responsibility:

"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).

This development held the potential of threatening incumbent regimes. African decision-makers were aware of this potential and that formed the basis of their skepticism towards UN missions (Franke 2009: 120).<sup>19</sup> The first practical test of the norm would indeed highlight this risk. In 2011, around the time of the crisis in Libya, the end of President Gbagbo's rule in the Ivory Coast was sealed by the robust United Nations Operation in

18 The Brahimi Report, published in August 2000, had been commissioned by UN Secretary General Kofi Annan. It contained the recommendations of a panel of high-level experts regarding the future of UN peace operations.

19 See Sudanese President Bashir's strict rejection of accepting a UN mission as successor to the AU's African Union Mission in Sudan (AMIS).

Côte d'Ivoire (UNOCI) mission, which had been legitimized with reference to the POC and operated in cooperation with French troops. At this time, West Africa's former success story had been facing years of domestic conflict and violence, first erupting in 2002 and only brought under control by the dispatch of UN blue helmet troops. The oft-postponed presidential elections were meant to finally establish peace between the Gbagbo supporters that dominated the south and those of his long-time challenger Ouattara in the north. They, however, allowed the conflict to escalate. While independent election observers foresaw Ouattara winning, an election committee, dominated by Gbagbo's followers, declared the incumbent president to be the winner. During the violent conflict that subsequently erupted, the UN did not assume the role of a neutral observer but supported Ouattara's claims of electoral victory.<sup>20</sup> It strengthened its UNOCI troops and activated the emergency mandate under Resolution 1975 from 30 March 2011 with its aim of protecting civilians, particularly from the use of heavy weapons.<sup>21</sup> Even though the incumbent president revoked the allowance he had originally granted for blue helmets to be stationed in the country, the UNOCI troops refused to withdraw. Instead, they attacked the weapons holds of Gbagbo's supporters with the aid of French troops, forcing his resignation and finally arresting him on 11 April.

While many African rulers may perceive the POC norm to be no less risky than R2P, the AU and other African organizations and states in fact supported this concept even after its first application. Two developments confirm the co-evolution of this protection norm on the global and regional levels.

First, the AU passed a draft of African POC guidelines in 2010, which strictly adhered to the views of the UN's DPKO. While a series of other AU missions were also meant to protect civilians in one way or another, the AU explicitly tasked the African Union Mission in Sudan (AMIS) and the African-led International Support Mission to Mali (AFISMA) with this goal. The protection of civilians is also the top priority in the operational planning for the African Standby Force (ASF). Plans for the ASF contain even more robust deployment rules for peace operations than those of the DPKO (Dembinski/Schott 2014: 287).

Second, contrary to the demand to have African solutions to African problems, the AU and other African actors seem to be pursuing a cooperative relationship with the UN with respect to peacekeeping operations. While the AU's initial planning foresaw a massive intervention force of 20,000 African troops, including brigades from each of the five sub-regional organizations (Regional Economic Communities, RECs), current plans only call for a small, quickly deployable fighting unit of around 1,500 soldiers. But even this capacity still only exists on paper. The AU would largely be dependent on extra-continental actors for critical capabilities such as reconnaissance and air transport. Rather than adhering to the policy of independent action, observers advise the AU to either limit itself to short-term missions that can eventually be handed over to the UN or to actively

20 S/RES/1962 (2010), 20 December 2010.

21 S/RES 1975 (2011) 30 March 2011.

assume a part in UN operations (Coleman 2011). Moreover, the AU and subregional organizations have been accepting of the trend towards more robust and independent approaches to UN missions in Africa. The final step in this development was the creation of the heavily armed intervention brigade for the United Nations Organization Stabilization Mission in the DR Congo (MONUSCO) in eastern Congo, explicitly tasked with taking the offensive against armed parties that were undermining the peace process (Cammaert 2013).

However, the AU has made its willingness to work with and be dependent on the international community conditional on factors that draw from the justice motif. First, the AU understands any dependence on extra-continental organizations and states to only be temporary and the result of the fact that the financial resources and military capabilities possessed by the AU and the RECs are still deficient. In order to minimize the danger of financial dependence becoming political dependence, the AU has called for reliable and non-conditional mechanisms for financing the African peace architecture.<sup>22</sup> In the view of states such as South Africa, a greater share of the financing for African security structures must be covered by African states in the medium term. Thus, the pan-African idea of independence and self-established peace has only been postponed and not abandoned.

Despite still lacking the capacities to secure peace in Africa, the AU has insisted on being fairly involved in implementing the global norms for peacekeeping. In a report about the partnership between the AU and the UN during peacekeeping in 2012, the AU expressed the expectation that the Security Council “should give due consideration to the decisions of the AU and its PSC [Peace and Security Council] in arriving at its own decisions.”<sup>23</sup> In subsequent official positions and reports, the AU strengthened its demands for involvement and political control in UN peacekeeping missions in Africa. Further, 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 such as a respect for African ownership and priority setting; “flexible and innovative application of the principle of subsidiarity” and “closer consultation and coordination [...], based on African ownership and leadership”.<sup>24</sup>

In sum, the AU has made acceptance of any robust peacekeeping missions in Africa dependent on a commitment from extra-continental actors to closely consult with African bodies and give credence to their concerns and interests when implementing the peace doctrine, even if African actors themselves can only offer little in terms of resources. The AU continues to recognize these concepts and has deepened its cooperation with the UN in response to the latter having broadly respected the former’s demands for

22 See Report of the African Union-United Nations Panel on Modalities for Support to African Union Peacekeeping Operations, A/63/666; S/2008/813, 31 December 2008.

23 Report of the Chairperson of the Commission on the Partnership Between the African Union and the United Nations on Peace and Security: Towards Greater Strategic and Political Coherence, PSC/PR/2.CCCVII: para. 45.

24 Report of the Chairperson of the Commission on the African Union-United Nations Partnership: The Need for Greater Coherence, PSC/AHG/3.CCCXC VII.



co-determination and control. The UN's political course in the Ivory Coast was approved by ECOWAS and the AU and both ECOWAS and the AU had requested more robust actions by UNOCI. The creation of the intervention brigade for MONUSCO was initiated by the subregional International Conference of the Great Lakes Region (ICGLR) and received support from the AU and the Southern African Development Community (SADC). South Africa, Tanzania and Malawi supplied the troops for the intervention force, thereby highlighting African demands for determining the deployment of such units on its own. As such, it is evident that regional participation and involvement prove to be vital to the regional acceptance of robust peacekeeping missions carried out by extra-continental actors in Africa.

#### **4. The impact: summary and implications for political practice**

Up to now, research has dealt with the interactions between global and regional security organizations primarily from the viewpoint of norm diffusion. In contrast, this study highlights the importance of procedural fairness for the regional acceptance of global norms. It does so by cross-fertilizing international relations theory with insights from empirical justice research. From the perspective of justice research, international orders are accepted when the institutions they produce contribute to a just distribution of material or immaterial goods, risks and burdens and when they give the affected parties opportunities for participation in implementing the rules of this order. As such, the procedural dimension exerts its own influence in this context. The probability that decisions will be accepted by those affected depends on the procedures that are chosen and the degree to which these correspond to perceived standards of justice.

This report has illustrated these effects with two cases: the AU's reactions to the Responsibility to Protect and to the Protection of Civilians norm. Both cases confirm the expectations set out by the theory of institutional justice. They both are highly similar but diverge with respect to a central causal factor as well as in their outcomes. Both cases have to do with the recognition of individual rights to protection as well as the impact that this recognition has on the distribution of rights, obligations and risks among states. The African Union accepted both emergent global norms at an early stage but made acceptance of these norms conditional on the right to procedural co-determination. The acceptance of these norms was put to the test for both cases during their first implementation in 2011 with the crises in Libya and in the Ivory Coast. For the case of Libya, the African Union was denied the right to involvement it had demanded. As a consequence, the AU criticized the unjust way in which R2P had been implemented and began to question its acceptance of the norm altogether. In the case of the Ivory Coast, the AU was involved in all the decisions and therefore strengthened both its acceptance of the POC and cooperation in peacekeeping with extra-continental actors.

A reconstruction of the events and an analysis of the justifications put forward by African actors further highlighted the significance of procedural justice. In both cases, the

right to be involved in implementation played a central role within the African debates. Criticism from Africa towards the coalition's actions taken in Libya revolved around the topics of foreign determination, the violation of the pan-African right to self-determination, and exploitation. It did not, however, reflect any fundamental opposition to the possibility of making state leaders accountable for human rights violations. The debate in Africa about the POC norm following the events in the Ivory Coast revolved around co-determination, possibilities for control and respect for African rights to self-determination. Here it was made clear that the AU will only continue to cooperate with extra-continental actors as long as they recognize the principle of "African ownership and priority setting".

In contrast, the central assumptions of norm diffusion theories were not confirmed in the cases. The R2P and the POC norm hardly differ in their adaptability to the African tradition of granting state leaders immunity. They both embody similar risks to state leaders and, in fact, had similar results for them in the two cases. Nonetheless the AU distanced itself only from the R2P and not from the POC.

The conclusions that can be drawn from these observations are clear. An ambitious international order, whose institutions reflect the realities of globalization and are capable of coping with the associated demands, dependencies and externalities, will only become widely accepted among affected actors if it satisfies demands for justice. This requires agreement on the fundamental principles of distribution but also procedural fairness: local or regional actors need to have a say when global norms are applied in concrete cases. The growth of regional security organizations reflects local actors' insistence on co-determination. From their perspective, this is an essential element in any just institutional order. Demands for involvement made by regional organizations do not put the substance of a global order into question. According to the theory of institutional justice, the devolution of responsibility to the regional level represents an opportunity rather than a risk for realizing global governance. The regionalization of the architecture of global governance, for which the founding conference of the UN in San Francisco had called already in 1944, seems to be more pertinent than ever.

The German federal government appears to concur with this insight. It not only acknowledges the growing importance of regional security organizations but also sees in them the potential for stabilizing the global order. In its response to a parliamentary question in 2010, the government argued that regional security organizations can "make a significant contribution to promoting peace and security" and can serve as "forums for finding solutions to regional problems".<sup>25</sup> Even the German Chancellor repeatedly spoke of the need to "enable" these organizations. The idea that the West cannot intervene in all conflicts but must rely on stronger engagement on the part of other regional organizations and key states has since become a standard argument by the German federal government. However, this argument also has a problematic subtext: that these other actors must be enabled to better promote Western interests. Such an understanding certainly

25 Deutscher Bundestag, Drucksache 17/2833, 1 September 2010, p. 2 (our translation).

underestimates the emancipatory interests of regional actors. In the short term, a strategy that only relies on financial offers to attract willing local actors may prove effective. In the long term, strengthened regional security organizations will most likely constitute building blocks of a global order when they possess a fair degree of co-determination in the political processes that affect their regions. For the sake of avoiding misunderstandings, the German government should do two things. First, it should emphasize its willingness to pursue the devolution of political responsibility. And, second, it should pressure the EU, NATO and their member states to accept the principle of only intervening in other regions in accordance with the views and interests of the relevant regional security organizations. Ultimately, a state pursuing a responsible foreign policy is well-advised to recognize the views held by other states.

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