



GOVERNANCE AND LIMITED STATEHOOD



Regional Organizations and Democracy, Human Rights, and the Rule of Law

The African Union, Organization
of American States, and the
Diffusion of Institutions

Sören Stapel

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Governance and Limited Statehood

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To Nuer

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Abbreviations

AAEA	African Association of Electoral Authorities
ACDEG	African Charter for Democracy, Elections and Governance
ACHPR	The African Commission on Human and Peoples' Rights
AfCHPR	African Court of Human and Peoples' Rights
AfDB	African Development Bank
AGA	African Governance Architecture
ALADI	Latin American Integration Association
ALF	African Leadership Forum
APEC	Asia-Pacific Economic Cooperation
APRM	African Peer Review Mechanism
APSA	African Peace and Security Architecture
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAN	Andean Community
CARICOM	Caribbean Community
CELAC	Community of Latin American and Caribbean States
CEN-SAD	Community of Sahel-Saharan States
CIS	Commonwealth of Independent States
CJI	Inter-American Juridical Committee
CoD	Community of Democracies

CoE	Council of Europe
COMESA	Common Market for Eastern and Southern Africa
COW	Correlates of War
CSCE	Conference for Security and Co-operation in Europe
CSO	Civil Society Organization
CSSDCA	Conference on Security, Stability Development and Co-operation in Africa
CSTO	Collective Security Treaty Organization
DEAU	Democracy and Electoral Assistance Unit
DPA	Department Political Affairs
EAC	East African Community
ECCAS	Economic Community of Central African States
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
EU	European Union
IADC	Inter-American Democratic Charter
ICGLR	International Conference on the Great Lakes Region
IDEA	International Institute for Democracy and Electoral Assistance
IEC	Independent Electoral Commission
IO	International Organization
LAS	League of Arab States
MERCOSUR	Common Market of the South
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NC	Nordic Council
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organization
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OECS	Organisation of Eastern Caribbean States
OLS	Ordinary Least Squares
OSCE	Organization for Security and Co-operation in Europe
PACHR	Permanent Arab Commission for Human Rights
PIF	Pacific Islands Forum
PSC	Peace and Security Council
REC	Regional Economic Community
RO	Regional Organization
SAARC	South Asian Association for Regional Cooperation

SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
SAR	Spatial-Autoregressive
SCO	Shanghai Cooperation Organization
SICA	Central American Integration System
SIRG	Summit Implementation Review Group
UCDP	Uppsala Conflict Data Program
UDP	Unit for the Promotion of Democracy
UN	United Nations
UNASUR	Union of South American Nations
UNECA	United Nations Economic Commission for Africa
UNSD	United Nations Statistics Division
USMCA	United States-Mexico-Canada Agreement
WDI	World Development Indicators

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1

Introduction

“African Union peacekeeping forces go under the UN flag, so why not ASEAN? We just have to check how they do it,” Malaysian Defense Minister Hishammuddin Hussein told reporters after chairing a meeting of defense ministers of the Association of Southeast Asian Nations (ASEAN) at Langkawi, Malaysia, on March 16, 2015. The reference to such a peacekeeping force came as a surprise to the occasional observer of ASEAN. The organization’s member states are notoriously reluctant to adopt such far-reaching instruments for their fear that the underlying norms and the application of instruments would clash with ASEAN’s longstanding principle of non-interference in each other’s domestic affairs (Narine 2002; Kuhonta 2006; Coe 2019; Spandler 2019; Davies 2021). However, Hussein’s remarks show, at least to some extent, that ASEAN member states and the current rotating ASEAN chair considered the potential of such a regional peacekeeping force and the ways regional peacekeeping forces are designed, based on the African Union’s approach.

On December 20, 2011, the member states of the Southern Common Market (MERCOSUR) adopted the Montevideo Protocol. This protocol

has re-adjusted MERCOSUR's democratic clause and further specified the definition of democracy and potential instruments that can be applied in cases of misconduct of the member states. The political decision to introduce the new protocol was reached after representatives of the Union of South American Nations (UNASUR) had adopted their very own democratic clause. The then president pro tempore of MERCOSUR announced in the organization's Forum of Political Consultation and Coordination, the main decision-making body for political cooperation in MERCOSUR, that the "Protocol on Democratic Commitment [was] approved on November 26 in the framework of UNASUR. In this context, he underlined the desirability of considering a revision of the Ushuaia Protocol on Democratic Commitment in MERCOSUR, in line with the progress made in the South American context" (MERCOSUR 2010).¹

In yet another region, member states of the Southern African Development Community (SADC) discussed, in 1992, a document that "presented a well-researched, comprehensive, and sophisticated perspective on economic integration, comparing various models and selecting the one deemed most suitable for Southern Africa" (Nathan 2012: 27). The SADC Secretariat sought to kick-start the process of political and security co-operation in the early 1990s. Their ideas were closely modeled after the Conference for Security and Co-operation in Europe (CSCE) (Nathan 2012: 28–29). Initially, the proposed institutional setup was swiftly approved by bureaucrats and some member states of SADC. However, a competing alternative approach toward political and security cooperation was introduced by a number of member states shortly thereafter. Because of sharp dividing lines between these two groups of member states, long-lasting negotiations ensued about the right course of action. The revised Protocol on Politics, Defence, and Security Co-operation featured design elements from both competing proposals and was then introduced in 2001 (Nathan 2012).²

¹ Interviews with representatives from the General Secretariat of MERCOSUR and a representative from the civil society in Montevideo, March 2015.

² Interview with representative from the General Secretariat of SADC, November 2014.

Regional organizations (ROs), such as ASEAN, MERCOSUR, and SADC, have gained a prominent role in promoting, assisting, protecting, and defending minimum standards of democracy, human rights, and the rule of law in their member states and sometimes also third countries (Börzel and van Hüllen 2015; Wobig 2015; Pevehouse 2016). They complement the activities of powerful states and international organizations (Magen et al. 2009; Youngs 2010). Today, almost every RO seeks to promote and protect standards for democracy, human rights, and the rule of law at the national level, irrespective of its original purpose, including simple free trade agreements.

When ROs address democracy, human rights, and the rule of law, they introduce regional institutions, defined as a set of rules and standards that govern the behavior of states of a RO and of states within a RO. They not only face the choice to adopt regional institutions but also define the content and instruments (the institutional design). As the three observations illustrate, ROs closely observe the activities of peer organizations when they adopt and design human rights regimes, democracy clauses, and rule of law provisions. The outcomes of these processes differ, however. They may result in similar activities as the adoption of regional institutions in the case of MERCOSUR shows. ROs may also agree upon adapted versions of the reference source, for instance the design of regional institutions in the case of SADC. Even the non-adoption and outright rejection of the reference model frequently happen. After all, the instrument of a regional peacekeeping force has never materialized in ASEAN.

The rise of regional institutions is characterized by a dual trend. On the one hand, ROs have increasingly adopted regional institutions to promote and protect standards of democracy, human rights, and rule of law in their member states over time. Regional democracy, human rights, and rule of law institutions have spread globally. On the other hand, when ROs address democracy, human rights, and the rule of law, they tend to adopt, promote, and protect norms and standards very similar to the approaches of other ROs. This overall trend hides important and persistent variation regarding the specific design features of the institutions for promoting and protecting democracy, human rights, and the rule of law. From these considerations follows the question that I

address in this book: Why and how do ROs adopt and design regional democracy, human rights, and rule of law institutions?

In short, the interplay of demands and diffusion accounts for the global adoption and the design of regional democracy, human rights, and rule of law institutions. Demands and diffusion do not take effect independently of each other, but they intersect and supersede each other with regard to both the adoption and the design of regional institutions. The interplay varies across types of adopters and across instances of institutional designing. Diffusion becomes more important from pioneers to early followers to late adopters and across multiple instances of re-designing institutions. At the same time, demand factors cannot be neglected. They influence the adoption and institutional designs by pioneering ROs. Additionally, they take effect across various instances of re-designing institutions, where (the lack of) demand limits diffusion effects. As a consequence, demands can be conceived of as both enabling factors for and constraining factors of diffusion. Demands are enabling diffusion as first innovators set the path for diffusion of both adoption and design. Yet demands also constrain diffusion processes of following and late adopters regarding the adoption and design of regional institutions. Demands and diffusion affect each other.

Regional democracy, human rights, and rule of law institutions have important real-world repercussions. This book addresses the adoption and design of regional institutions but not their effects and effectiveness in promoting and protecting fundamental governance standards. These regional institutions nevertheless are consequential for states and their citizens. Regional institutions affect states. They define and prescribe how member states should act. ROs and their institutions socialize member states into certain behavior and themselves spread norms and standards. ROs function as conduits and catalysts for societal change (Kelley 2012; Greenhill 2015). While this certainly holds true for many standards and norms at the regional and international level (Tallberg et al. 2020), regional democracy, human rights, and rule of law institutions especially matter in times of democratic backsliding and the renewed rise of authoritarian practices around the globe. They prevent, curb, and correct the disregard and violation of fundamental standards

and rights through various means, and make their occurrence increasingly costly and more difficult in the first place (Sadri 2019). Regional institutions also affect the citizens. Most directly, regional institutions take effect in national law-making and change the fundamental rules of the game. In the absence of implementation and compliance, however, regional institutions may serve as focal points. They raise awareness and provide important benchmarks for assessing appropriate behavior of governments, especially in their interaction with citizens. Regional institutions empower citizens with powers and capacities to hold governments accountable for their actions, often marginalized and those most directly affected by governmental malpractice (Helfer and Voeten 2014; Witt 2019; Weiss 2021). It is therefore important to understand when, why, and how regional democracy, human rights, and rule of law institutions spread around the globe.

The book's contribution is threefold. Empirically, the book provides a comprehensive overview of the institutions that ROs adopt and design to promote and protect democracy, human rights, and the rule of law. Regional institutions have spread globally. Their designs have become increasingly similar, and yet particularities persist. The empirical contribution draws on two novel and unique data sets on regional human rights, democracy, and rule of law institutions. The GTRO adoption data set comprises information when ROs adopted democracy, human rights, and the rule of law institutions for all 73 ROs in the world (Panke et al. 2020). The GTRO design data set catalogs provisions that capture various aspects with respect to the standards (content) and instruments (mechanisms) of regional institutions based on 288 primary documents for a representative sample of 23 ROs. This is the most detailed assessment of the design of regional democracy, human rights, and rule of law institutions to date. The data sets are characterized by a broad scope of analysis, a comprehensive coverage of ROs, a long time period (1945–2020), and the type of data that has been collected. This makes it possible to observe patterns in the adoption and design of regional institutions across several dimensions. This comprehensive overview is combined with and complemented by in-depth case studies about the making and change of regional institutions in two ROs.

Theoretically, the book focuses on a timely and important aspect and explores why and how ROs adopt and design regional democracy, human rights, and the rule of law institutions. The book develops and tests multiple explanations. It takes on an agency-centered approach conceptualizing the adoption and design of regional institutions as an institutional choice by member states and regional actors. The book identifies factors that generate the demand of states for regional institutions, on the one hand, and factors that shape its institutional design, on the other. The book maintains that demands from relevant actors as well as diffusion from external sources take effect at the same time, and it clarifies how the interplay of demands and diffusion plays out in the adoption and design of regional institutions. The theoretical argument combines the hitherto juxtaposed explanatory factors of demands and diffusion. Moreover, the book does not provide separate explanations for democracy, human rights, and rule of law institutions but offers a single approach to explain the adoption and design of all three fundamental governance standards.

Methodologically, I assess the consistency of the evidence with the theoretical expectations through quantitative analyses and two case studies. While existing contributions usually draw insights from single case studies or comparative case studies, only few rely on statistics to analyze and explain the adoption and design of regional democracy, human rights, and rule of law institutions. Moreover, the mixed-method design allows for combining the descriptive analysis of adoption and design patterns and multivariate statistical analysis of explanatory factor with in-depth accounts of the underlying motivations of relevant actors and decision-making processes at critical junctures for two carefully selected cases.

The Puzzle

Regional organizations have increasingly adopted regional democracy, human rights, and rule of law institutions over time (Fig. 1.1). Shortly after the end of World War II, a small number of ROs has pioneered the adoption of regional institutions. The Organization of American States



Fig. 1.1 Adoption of regional democracy, human rights, and rule of law institutions

(OAS), the Council of Europe (CoE), and the North Atlantic Treaty Organization (NATO) made references to the norms in their founding treaties, or they adopted particular human rights institutions (Mower 1991; Brummer 2014). Few ROs followed these pioneers over the next four decades. Only around the end of the Cold War, there has been a surge of regional charters, declarations, and resolutions. Regional democracy, human rights, and rule of law institutions have proliferated since the mid-1980s and during the 1990s. Some ROs even adopt these institutions comparatively late and after they have existed for several years, such as ASEAN and SAARC. By the year 2020, more than 40 ROs have adopted institutions that promote and protect at least one of the three standards in their member states. At the same time, there is a group of about 20 ROs that have not adopted any of the three standards thus far. In addition to the sheer number of ROs, these fundamental standards are being adopted, promoted, and protected in all regions. Regional human rights, democracy, and rule of law institutions have spread globally.

In terms of their design, regional democracy, human rights, and rule of law institutions have increased in precision, broadened in scope, and were equipped with a diverse set of mechanisms to induce compliance (Börzel and Stapel 2015). Some ROs only make a superficial reference to these standards in the form of norm recognition (Tallberg et al. 2020). Moreover, many ROs have operationalized the designs over time and have laid out the various standards and instruments that member states should adhere to in the domestic context. The number of standards multiplied, were concretized, and were put into detail. With regard to the compliance and enforcement mechanisms, ROs often combine fora for dialogue and exchange with more intrusive instruments, such as sanctions, regional courts, and military force.

Continental political ROs from Africa, Europe, and the Western Hemisphere³ have set the path for the designs of regional institutions to promote and protect fundamental principles in their member states. Sub-regional, economic, and welfare-oriented organizations have complemented these pioneering efforts around the turn of the millennium. Their institutional designs have increased in precision and broadened in scope over time. By contrast, ROs from Asia, can be considered late adopters of precise and broad designs. Despite their adoption of these three standards, four ROs remain objectors to precise and broad regional institutions (APEC, NAFTA/USMCA, Nordic Council, and SCO).

Similarities in the design of regional institutions have equally increased. When ROs become active in promoting and protecting democracy, human rights, and the rule of law, they tend to adopt, promote, and protect norms and standards very similar to the approaches of other ROs. Regional human rights institutions are a case in point. If a RO adopts a human rights institution, it is very likely that this institution will cover fundamental political and civil rights or economic and social rights. Nevertheless, regional particularities persist. Some norms and instruments are present in only a few ROs or in one region, such as the prohibition of unconstitutional changes of government (standard)

³ The Western Hemisphere refers to states and organizations in the Americas (Caribbean, Central America, North America, and South America). The term should not be mistaken for the Western world. When referring to the Western Hemisphere, I follow the standard terminology used in academic and governmental sources in North and Latin America.

in ROs located in the Western Hemisphere and in Africa (Wobig 2015) or the right to militarily intervene in the domestic affairs of the member states (instrument) in African ROs (Hartmann and Striebinger 2015). Others are part of an evolving norm and form part of an established tool kit by now, such as election observation missions (Hyde 2011b). They achieved universal acceptance, and regional actors regularly refer to the standards. Apart from norms that have gained such a prescriptive status (Risse et al. 1999), similar contents tend to cluster regionally (Börzel and Stapel 2015).

The proliferation of regional institutions and the dual trend of growing similarities and persisting particularities of regional institutions to promote and protect fundamental standards in their member states challenge conventional explanations for institutional change by regional and international organizations. The main dividing lines between these literatures revolve around the assumptions of independent and interdependent decision-making. However, probing their explanatory power, none of the dominant theoretical approaches in the literature can account on its own for the emergence and design of regional democracy, human rights, and rule of law institutions.

On the one hand, the bulk of the literature assumes independent decision-making in ROs. The demands of regional actors, both member states and somewhat autonomous regional actors, feature prominently in this strand of the literature. First, classic works of human rights and democracy norms at the international and regional level have shown that domestic demands are decisive in the timing of norm adoption. Newly democratizing states either try to lock-in democratic norms and bind themselves to democracy and human rights (Moravcsik 2000; Pevehouse 2002; Pevehouse 2005; Simmons 2009) or member states seek to curb negative externalities that stem from their cooperation partners' disregard of these norms (Lake 1997; Jetschke 2019). Second, the rational design of international institutions literature argues that the demands from member states shape the outcomes. Institutional designs vary according to constellations of a number of factors, such as distribution and enforcement problems (Koremenos et al. 2001). Given the various backgrounds and needs of ROs and their member states, institutional designs should differ in the various regions.

Theoretical explanations built on independent decision-making can account for why the institutional designs vary in scope and enforcement mechanisms. After all, it is an institutional choice based on interests and motivations of member states (Koremenos et al. 2001; Hooghe et al. 2019). Meanwhile, the other two empirical observations presented in the introduction—spatial and temporal clustering of adoptions and increasing similarities as well as persisting particularities in design—pose a serious challenge to this literature. Vast similarities in content and instruments do not sustain this argument. Demands are not uniform in ROs, and we need to take into account the various preferences and strategies of actors involved in the decision-making processes. Demands may clash, and outcomes are negotiated by multiple actors at the regional level. This should lead to distinct patterns of adoption and design. For instance, ROs differ in their regime composition. The presence of democratizing states or negative externalities alone often do not result in the adoption of regional human rights, democracy, and rule of law institutions. The demands of non-democratizing member states equally need to be analyzed. Especially when considering instances of re-designing regional institutions, such as in the ASEAN and MERCOSUR cases mentioned above, domestic concerns may fade into the background. Theoretical accounts that draw on independent decision-making can hardly account for the fact that ROs become active at about the same time and that their design choices have converged over time. The demands and problems of ROs around the globe are not this similar so that we would expect to find similar outcomes at similar points in time. Instead, actors seem to heavily rely on reference models from external sources.

On the other hand, the processes of and consequences from interdependent decision-making of ROs provide theoretical indications to understand the spread of adoptions and designs. Diffusion processes have been prominently featured with regard to human rights norms (Finnemore 1996; Finnemore and Sikkink 1998; Kelley 2008; Jetschke 2009; Hyde 2011a; Greenhill 2015) and regionalism (Risse 2016; Lenz and Burilkov 2017; Agostinis 2019; Lenz 2021; Reiss 2022). The diffusion literature argues that the adoption of a particular model of prior adopters increases the likelihood of adoption by other, interdependent

actors (Strang 1991; Jahn 2006; Simmons et al. 2008; Gilardi 2012). Moreover, global script approaches theorize the influences of modern world practices on (domestic) systems and their expansion over time (Meyer and Rowan 1977; Wotipka and Ramirez 2008). Both approaches take a similar stance in the sense that they understand the spread of ideas and innovations as processes, although the former underlines the connectivity of two or more adopters and the latter emphasizes the creation of prescriptive practices by the world polity. They also mostly agree that interdependent actors converge on the motivations, processes, and outcomes.

Yet, these approaches cannot fully account for the observed patterns of adoption and institutional design. They have some explanatory power with regard to the global spread of regional institutions but they cannot explain why a number of ROs have not introduced any democracy, human rights, and rule of law standards so far. Diffusion approaches would also be capable of predicting why the designs of regional institutions have become increasingly similar. Yet, they have a hard time accounting for persisting particularities, especially those particularities that manifest themselves as distinctive features of regional institutions in various regions. In spite of increasing similarities, democracy and rule of law standards so far lack a central institutionalization of norms, and even human rights institutions vary considerably across regions. The same holds true for instruments that ROs have introduced to encourage compliance in the member states. Moreover, we need to conceptualize the various connections of ROs and the factors that led regional actors to rely on and adapt reference models to understand the effect that diffusion processes have on the design of regional institutions (Solingen 2012; Sommerer and Tallberg 2019).

The Argument

I argue that the interplay of demands and diffusion plays a significant role for the timing of adoption and the design of regional democracy, human rights, and rule of law institutions. Demands and diffusion do not take effect independently of each other but complement each other.

Demands originate in the member states of ROs. Following their interests, states adopt and design institutions to further their own goals and to achieve distinct benefits (Keohane 1984; Abbott et al. 2000; Koremenos et al. 2001; Jupille et al. 2013). Member states can be driven by different motivations to adopt regional institutions, including the desire to lock-in recent democratic achievements at the regional level (Moravcsik 2000; Pevehouse 2002; Closa and Palestini 2018), to alleviate concerns over legitimacy with respect to domestic and international audiences (Söderbaum 2004; Kirschner and Stapel 2012), or to curb negative externalities that arise in the from democratic breakdown and massive human rights violations (Lake 1997; Jetschke 2019). Hence, regional institutions are often adopted in the aftermath of democratic transitions, domestic legitimacy crises, and domestic or transnational conflicts of member states. In these moments, member states seek to secure future benefits or to cope with collective action problems.

The configuration of member states and their demands influence the likelihood of achieving an agreement and to design regional institutions. Preference heterogeneity and potential enforcement problems make cooperative agreement unlikely (Koremenos et al. 2001). To resolve their differences or to address concerns about the potential defection from the agreement, states rely on issue linkage as part of package deals (Martin 1994; Aggerwal 1998; Slapin and Gray 2014; Allee and Elsig 2016) or they make credible commitments which raise the costs for defection (Fearon 1997; Simmons 2002; Allee and Elsig 2016). In their attempts to cope with preference heterogeneity and to overcome potential enforcement problems, ROs specify the content of standards, increase the scope of standards covered in the agreement, and introduce more severe compliance mechanisms. In other words, regional institutions become more precise, broader in scope, and include stronger compliance mechanisms.

At the same time, ROs are influenced by other organizations through diffusion processes (Risse 2016; Sommerer and Tallberg 2019). Diffusion occurs when an institutional innovation in one political entity systematically conditions and alters the probability of the adoption of the