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Institutional design of democratic conditionality in
regional organizations

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Abstract

Democratic conditionality accession clauses have become increasingly common in certain international organisations. Similarly, provisions on suspension of membership because of breaches of democratic order have emerged. Why do regional organisations introduce these kind of clauses? In most cases, they developed after 1989 in a new geopolitical climate in which democratic ideals acquired normative hegemony. This does not exclude a purposive rational institutional design. On the one hand, accession clauses developed a posteriori of the creation of the organization being applied hence to new members rather to the ones creating them. These clauses have been used as an instrument for fostering clubness and imposing institutional features of applying states. On the other hand, in the case of suspension, institutional design serves to trade-off two competing principles: commitment to democratic conditionality and respect for sovereignty of member states and it does so by leaving wide discretion in implementing provisions for suspension clauses.

Keywords

Institutional design, Comparative regional integration, Democratization

Introduction*

Why do regional organizations contain a democratic clause for membership and/or the suspension of rights? The design of international institutions seldom includes a democratic requirement for membership and clauses for scrutinising members' adherence to this principle. In fact, in a data set of 85+ IOs (Closa et al.; 2013 forthcoming), only a handful of these required their members to be democratic and to respect human rights. By and large, these coincide with organizations that define themselves as "regional" (i.e. restricting membership to a given regional area) and as "integrational" (i.e. defining "integration" –mainly meaning economic integration– as one of their objectives). The democratic requirement is often matched with a democratic control clause which allows organizations to suspend membership if democratic values or human rights are conculcated (the cases in which there is an explicit reference are AU, CAN, ECOWAS, EU, MERCOSUR, OIF, OAS, UNASAUR). Some others have a broader clause which allows suspension if states fail to comply with their obligations, which has been taken loosely as also covering democracy (i.e. SADC towards Madagascar). Organizations with this kind of provision exist in different regions of the world with different national traditions, and their convergence on this similarity of design challenges the assumption of institutional variance due to the different ideas and identity of actors, as well as history (Johnson and Acharya; 2007).

This paper discusses why the institutional design of some regional integration organizations contains this specific provision, i.e. the existence of a democratic conditionality clause. This paper examines two pieces of institutional design connecting democracy and membership: accession and suspension. They pose different challenges for actors: in accession clauses, current members hypothetically pass on the "burden of proof" to would-be members, and thus the former may act as "club members", imposing costs on third parties. In suspension clauses, however, any member may be affected; they therefore need to take into account in their design the possibility of being affected by the clause themselves. Thus the trade-off between limiting sovereignty and institutional efficiency is more acute.

For each of these two pieces of institutional design the paper reviews, firstly, their explicit inclusion in the charters of IOs and the moment at which this happens. This allows us to establish whether "club behaviour" prevailed. Secondly, it examines the institutional design for implementing provisions for conditional membership. In order to control the effects of such provisions, states may try to shape their practical implementation. They may try to limit delegation to independent implementing agencies, or they may reinforce their decision-making role by means of certain voting thresholds that secure their influence, etc. Thirdly, the paper looks at the practical functioning of the institution of democratic conditionality.

1. Democratization and membership of international organizations: The second image reversed

Membership of international organizations serve to create a credible commitment to democratization (Pevehouse; 2002; Mansfield and Pevehouse; 2006). Domestic actors perceive membership as a strong guarantee of their commitment to the new regime, and this commitment clearly establishes the structure of costs and benefits respectively of sticking to the original commitment or of breaching it. In parallel, a significant literature has explored the capacity of IOs to act as promoters of democracy vis-à-vis third states (Pridham, 1994; 2001; Whitehead; 1993; 1996a; 1996b; Hungtington; 1991) and

* An earlier version of this paper was presented at the Workshop on the Design and Effects of International Institutions, at the ECPR Joint Sessions of Workshops, in Mainz, on 12-15 March 2013. I am grateful for the comments received there.

several cases record successes of IOs as anchors and or promoters of democracy (for instance, MERCOSUR; Malamud, 2013:11).

These analyses take into account not only the “demand” side for credible commitment (the demand coming from democratizing states) but also the “supply” side; i.e. the IOs’ offer of these commitments. However, in this literature supply does not derive from the specific institutional characteristics of the organizations, but from an analytical construction of the organization’s character, arising from the characteristics of the regimes of its member states. Thus, Pevehouse (2002: 16) correlates democratization with the “democratic density” of IOs, defined as the average level of democracy within a regional IO, taking member states as the unit of analysis. From this, he argues that the higher the “democratic density” of an IO, the more likely it is that liberalization requirements will exist and be enforced.

In this model the institutional characteristics and, specifically, the institutional conditionality of the IOs remain unexplained or unaccounted for. Logically, with membership being conditioned on the democratization argument, IOs with high democratic density may be more prone to create some sort of explicit and formal democratic condition for the accession of potential members. This choice raises a dilemma: on the one hand, conditionality creates a commitment to a model which reduces uncertainty about the future behaviour of a state by locking it into specific features consistent with the objectives of the organization (and other states). In particular, requiring a country to be democratic in order to become a member of an organization diminishes uncertainty about the future configuration of its domestic regime; and this may increase the certainty that the regime will honour its international commitments. But on the other hand we may assume that states do not wish to restrict their unfettered sovereignty by creating supra-state commitments which they cannot control. Setting conditions for membership such as respect for democracy and human rights contradicts the principles inherent in many organizations that they should respect the principles of sovereignty and non-intervention.

Three theoretical approaches offer possible responses to the question of why IOs create conditional democracy provisions for membership. A realistic position would argue that institutions do not matter, and states can quite simply afford to have any kind of provision constraining their domestic behaviour, since they can ignore them. If this were the case, we could expect any organization to contain this kind of provisions, since they do not matter. And yet they seldom occur, proving intuitively that states are not prepared to create this kind of provision, whether efficient or not. An alternative response would emphasize the power of ideas and norms, and it would argue that the ideal of democratic government has become a globally accepted principle which is broadly endorsed and shared (Franck, 1992; Fox, 1992; Marks, 2011; McMahon, 2012). Moral principles such as equality, liberty and democracy can be said to transcend current political practice; they can be considered as global goods (Coglianese, 2000), and even organizations such as OAU, in which sovereignty concerns originally led to scepticism about considering these values as “global goods”, have ended up embracing them as a mechanism to foster their legitimacy (Lotze et. al. 2012). On the other hand, a number of authors (Acharya, 2001) contest the universality of certain norms, adopting similar constructivist positions; democracy, like other norms, would be perceived as a specifically Western norm which could not be replicated by other organizations such as ASEAN.

The rational design approach provides a third alternative explanation: states use international organizations to further their own goals, and they design institutions accordingly (Koremenos et al; 2001a: 762). International institutions are the self-conscious creation of states. States construct and shape institutions to advance their goals (...); design differences are not random. They are the result of rational, deliberate interactions among states and other international actors to solve specific problems. And the institutional design responds to a dilemma between efficiency and sovereignty: all things being equal, nation-states might be expected to prefer institutional designs that impose the least constraint on their sovereign legal authority, but some of the least constraining forms may be ineffective (Coglianese, 2000: 298).

Applying this rationalistic assumption to conditionality, it could be argued that the existence of a democratic requirement may be attributed to rational deliberate interaction among Member States. Since conditionality acts as a restrictive device for membership, the stylized conjectures on institutional design deduced by Koremenos and associates may apply. They argue, firstly, that restrictive membership increases with the severity of the enforcement problem, and the severity of the enforcement problem increases with the number of actors (Koremenos et al, 2001a: 783-784). A second conjecture argues that restrictive membership increases with uncertainty about preferences. Membership enables states to learn about each others' preferences, and the membership mechanism can distinguish cooperative members from non-cooperators. Empirical evidence gathered within the rational design project supports only the second conjecture, i.e. restrictive membership increases with uncertainty.

This paper aims to bring together normative and rational design responses, which are in fact not contradictory in relation to democratic conditionality: organizations may choose to introduce democratic conditionality as a mechanism to enhance their own legitimacy. By doing so, they also serve to increase certainty. However, states calculate the effects of the working of the institution (even if the calculation is imperfect or plainly wrong). Along with these democratic criteria, states introduce into their calculation their wish to limit the delegation of sovereignty as much as possible. The institutional design of implementation of conditionality serves this purpose. Timing, scrutiny of compliance and decision-making procedures are three mechanisms that amplify the margin of action for states in applying conditionality.

2. The democratic requirement for membership in international organizations

Admission of new members may be costly, since it may impose costs on existing members and on the organization itself. For instance, accession may imply adapting the organs and the representation of member states within. Open accession (i.e. with no restriction whatsoever) exists in IOs in which the accession of a new member state contributes to furthering the organization's objectives.¹ More commonly, IOs condition membership on a decision of their organs and/or states, but it is not uncommon for organizations to restrict membership to states belonging to a particular group. In general, the nature of requirements for admission can usually be explained by examining the objectives of the organization in question (Schermers and Blokker; 2011: 87).

Organizations usually preserve "clubness", stipulating certain criteria for membership. When membership criteria exist, it is quite common to require that the acceding state should belong to the geographical area defining the region, to the point that geography may dictate the exclusion of an application (as happened with Morocco's application for EU membership). Geographical affinity is more often expressed in terms of continental position (i.e. African, American, Asian or European), although there exist a few cases of intercontinental geographical membership, either because they cover an intercontinental border area (e.g. GUAM), they cover a separating ocean/sea (i.e. rim organizations such as APEC) or because the basis for membership is cultural or religious identity (for instance, being an Arabic or Islamic country). Table 1 below provides a chart of existing democratic requirements for membership of IOs.

¹ The few examples are the ILO (art. 1.4); the WHO (art.6); FAO (art. 2.2), ESA (art. XXII); APSCO (art. 30.1); the Convention on Weights and Measures (1921) and the International Whaling Commission (art. XI)

Table 1 Membership requirements

Requirement		International organization
Structural	Geographical area	AEC, AU , ACS, ASEAN , CARICOM , COMESA, CAN, GCC, CoE , EAC , ECOWAS, ECO , EU , IOR.ARC, LAFTA, MERCOSUR , NATO, OAU, OAS , BSEC, OECS, OEI, SCO , SICA , UNASUR , UEMOA, WAMZ
	Cultural/religious	AAEU, Arab League, OIC, OIF, AMU
Political	Democracy and human rights (express mention in the treaty or protocol) and year of introduction	AU (2001), CoE (1949), EAC (2000), EU (1992), MERCOSUR (1996-1998), GUAM (2001), OAS (1992), UNASUR (2010)
	Commitment to respect the objectives and principles	ASEAN , CARICOM , CIS, ECO , EAEC, IOR-ARC, KEDO, NATO, OECD, GUAM, SCO , SICA
No specific requirement		IAEA, ICES, ILO, IMO, IMF, IMSO, ITSO, PICES, OPCW, UN, UPU, WIPO, WICO, WHO, UNWHO

Source: Own elaboration. In bold, integration schemes with more than one membership requirement

Table 1 above summarizes the findings of the analysis of 85 organizations. The data reveal that a relatively reduced number of organizations contain explicit provisions requiring would-be applicants to be democratic. Only eight referred to this condition. Strictly speaking, only the CoE, EAC, EU and GUAM include an explicit requirement to respect democracy. Moreover, only three of these originally had democracy as a membership requirement in their charters, while in the other five cases they acquired it afterwards. Hence, judging on the basis of explicit treaty requirements, states seem to favour sanctioning sovereignty rather than imposing constraints on their own regimes when designing membership rules.

The temporal sequence in the creation of those institutional provisions provides an important insight. The CoE introduced the provision into its constitution in the after-war period, while provisions in the OAS and NATO Charters implicitly conditioned membership on democracy. The NATO charter restricts membership to European states which may contribute to furthering the principles of the treaties (democracy, individual liberties and the rule of law); while OAS conditions membership on respect for the Charter and acceptance of its obligations, in particular those regarding collective security. The OAS amended its charter and introduced a procedure to verify whether conditions for admission had been fulfilled in connection with the admissibility of Trinidad and Tobago in 1967. On the other hand, the admission of not fully democratic Portugal into NATO (1949), and of several dubious Latin American democracies into OAS creates a perception of militant anti-communist organizations with a geopolitical role vis-à-vis third parties, rather than being strictly concerned with the domestic democratic quality of their partners.

From 1989 onwards, democratic conditionality clauses mushroomed in several organizations. While the EU had pioneered democratic conditionality policy since the 1960s, when the EP rejected a Spanish application for associated membership on grounds of non-compliance with human rights and democracy, it only created an explicit policy in 1992 with the Copenhagen principles and their eventual inclusion in the Treaty of Lisbon. A few other organizations imitated the move over the next two decades. Thus in 1996 MERCOSUR members signed the Democratic Commitment with Chile and Bolivia, and the members transformed it into the Ushuaia Protocol on Democratic Commitment in 1998. This requires members to maintain democratic systems and foresees systems for sanctions. Similarly, in 2000 the Andean Community approved the Additional Protocol to the Cartagena Agreement. Andean Community Commitment to Democracy and UNASUR, while it has no explicit

requirement of democracy, in 2010 approved an Additional Protocol on Democratic Commitment akin to the MERCOSUR one. The AU adopted the African Charter on Democracy, elections and governance and ECOWAS adopted the 2001 Protocol on Democracy and Good Governance which contains a long list of the criteria defining democratic good governance to be fulfilled by member states. Even though the SADC lacks a specific clause on democratic conditionality for membership, this may be inferred from the wording of other provisions. The SADC Treaty recognises “human rights, democracy and the rule of law” as principles guiding the acts of its members (art. 4) while Article 5 commits the Member States to “promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective”. It also commits Member States to “consolidate, defend and maintain democracy, peace, security and stability” in the region. The 2001 Protocol on Politics, Defence and Security Cooperation commits SADC Member States to the promotion of democratic institutions and practices as well as to respect for human rights, and the Principles and Guidelines Governing Democratic Elections (2004) reinforced this commitment. Finally, the Commonwealth of Nations added a democratic conditionality requirement with the 1997 Edinburgh Declaration.

In almost all cases, IOs acquired democratic conditionality after their creation. This may provoke some inconsistency between the initial design, in which membership was based on strict respect for the configuration of states’ domestic regimes, and the new demands of respecting the democratic principle. Original members did not have to fulfil conditions for membership, but they created them later as a pre-commitment for future applicants. For existing members, the democratic conditionality clause made sense as a suspension clause (i.e. a role of oversight granted to the organization over the domestic regime, once the state is a member of the organization).

Democratic conditionality matches geographically restricted membership: organizations restrict membership to a given geographical area (e.g. Europe, Africa, America)² as a precondition for accession in all cases in which democracy and respect for human rights is also required. GUAM is the only exception, being an organization of former Soviet states which covers both European and Asian states, although with a distinctly regional character. This establishes a clear pattern, setting aside the organizations with this kind of requirement from global (e.g. UN), functional (e.g. IHO) or intercontinental (e.g. APEC) organizations, the Commonwealth of Nations being the only exception. Thus, democratic conditionality is a regional rather than a global good.

Combining democratic conditionality with organizational objectives, the following pattern emerges: most of the organizations requiring their members to be democratic commit themselves to the objective of “integration”. In comparison, no free trade area explicitly requires its members to be democratic (although this may be implicit in NAFTA and EFTA). Free trade agreements do not necessarily require states to be democratic as a prerequisite for their conclusion. Even though democratic states outscore non democratic states in the number of trade agreements concluded, few (if any) FTAs contain democratic clauses. One explanation for this may simply be the bilateral character of these agreements: there being only two parties, each of them would simultaneously become the guardian and guarantor of the other’s democracy. Additionally, a second argument would sustain that free trade does not logically demand democracy for its effective functioning and the requirement is therefore unnecessary. The hypothesis arising from these facts is that the number and intensity of public goods delivered by an organization may make democratic conditionality more appealing not only as a normative legitimizing factor, but also as a factor securing certainty in future behaviour.

A caveat applies: in all cases, treaties contain nuances of the democratic requirements, with explicit recognition of the principles of sovereignty, territorial integrity, non-intervention, etc. Furthermore, three cases (AU, OAS, and UNASUR) set these principles as the objectives of the organization itself.

² Note the absence of Asian organisations: ASEAN had never stipulated rules on the nature of the political systems of its members. In 1997, and following the inclusion of Communist Vietnam, Myanmar joined, despite the country’s economic and political isolation by the West.

The African Union exemplifies this radical contradiction between its competing objectives: while the Constitutive Act prohibits member states from interfering in each other's affairs, the Union is vested with full rights of intervention on behalf of member states, once authorized by the Assembly of Heads of State and Government. The preservation of political stability constitutes a legitimate reason for intervention. It is also true that the AU has gone further, most notably in its legislative framework, than any other regional or sub-regional body in articulating the link between human rights and security, and in asserting the role of the regional community in protecting its citizens from gross violations of human rights (Loetz et al; 2012). All things considered, it seems that preserving the sovereignty of member states carries more weight than democratic conditionality in designing membership characteristics.

2.1. Institutional rules for implementing democratic conditionality membership: scrutiny and decision

Introducing democratic conditionality may boost the legitimacy of IOs. On the other hand, states want to preserve their own sovereignty as far as possible. Drafters of institutions thus face the dilemma of balancing these two competing principles. If drafters really do want to constrain states, then they will choose designs that minimize the twin problems of time inconsistency and political uncertainty. Increasing delegation with decreasing principal control acts in this direction. If drafters choose to prioritize sovereignty, they may choose more flexible implementation instruments. Hence, the institutional design of the implementation of democratic conditionality reveals how drafters settle the dilemma between sovereignty and certainty.

The two central features are the scrutiny of compliance of applicant states and the decision-making procedure for accepting new members.

Scrutiny of compliance. Scrutinising whether an applicant state complies with the conditions for membership may be entrusted to an independent agency or to an intergovernmental body. The choice is highly relevant since, prima facie, handling scrutiny to a third party increases the credibility of both the organization and the democratic credentials of the acceding state which obtains clearance.

- *Independent agencies.* This model prevails in European organizations. In 1951 the CoE formalized a procedure³ which called for consultation with the Consultative Assembly (afterwards, PACE). The Assembly's political pluralism limited the ability of national governments to manoeuvre freely, bypassing democratic conditionality. Since 1992 the Venice Commission, an advisory body to the Parliamentary Assembly (PACE), has scrutinized the conformity of the legislation of applicant states to the standards of human rights, rule of law and respect for human rights of the CoE. While PACE votes on the basis of those non-binding reports, the final decision still remains in the hands of the Council of Ministers. In the EU, the Commission scrutinizes the fulfilment of criteria, evaluating progress and setting benchmarks.
- *Intergovernmental bodies.* Most organizations remain silent on the existence of a scrutiny body. In some cases, organizations have in practice constructed intergovernmental bodies, such as the EAC Verification Commission, following the applications of three states. But *ad hoc* intergovernmental procedures are the most common practice.

Decision-making. Virtually no organization applies conditionality mechanically, whereby a positive review of progress will automatically lead to accession. In all cases, member states reserve the right to vote on accession. In most cases, accession is decided by unanimity or consensus (in fact, majority for accession of new members is a rather exceptional provision which exists in the WHO (art. 6) and AU (art. 29.2)). An exception to this rule is the OAS, where accession decisions require the affirmative vote of two thirds of the Member States.

³ Resolution adopted by the Committee of Ministers at its 8th Session, May 1951.

2.2. Practice of democratic conditionality

Admission practices do not necessarily conform to the formal conditions established. For instance, in relation to the UN, Schermers and Blokker (2011: 83) note that since the second half of the 1950s conditions (i.e. being “peace loving states”) have played a diminishing role in evaluating membership, and they have been invoked only incidentally by individual members, to the point that UN practice has evolved from conditional to unconditional universality. In general, the costs of implementing conditionality provisions may explain the divergence between the norm and its implementation: “costs” refer to the political cost of delegating powers to implementing organs, but also literally to the material cost that implementation may incur. Naturally, this applies to democratic conditionality.

Table 2. Democratic conditionality provisions on accession to IOs

Organization	Original membership	Conditionality provision/year	Acceded members (feb. 2013)	Denied membership
African Union (formerly OAU)	31	Y (Ac)/2001	23	
CAN	4	Y (Ac)/2000	1	0
CARICOM	4	N	11	0
Council of Europe	10	Y (1949)	37	2 (Belarus, Kazakhstan)
Commonwealth of Nations	7	Y (ac)/1997	47	0
EAC	5	Y	0	1 (Sudan)
ECOWAS	15	Y (Ac)/2001	0	0
EU	6	Y	22	1 (Morocco)
MERCOSUR	4	Y (Ac)/1996-8	1	0
NATO	12	Y (ac)/1992	16	0
GUAM	5	Y	0	0
OAS	21	Y	14	0
OIF	21	Y (Ac)/2000	36	0
SADC	10	Y (ac)/2001	5	0
SICA	6	N	1	0
UNASUR	12	Y (Ac)/2010	0	0

* Chile withdrew unilaterally on 30 October 1970 because of disagreement with CAN Decision No. 24 on the treatment of foreign capital which had a marked protectionist character. Ac (Acquired)

More specifically, the practice of democratic conditionality for membership presents a weak picture. In general, membership has remained fairly stable, with European organizations heading growth: the CoE (37 new members since its foundation); EU (22) and NATO (16). Outside Europe, the AU acquired 23 new members, the OAS 14 and MERCOSUR (1). Rejections are very infrequent: just three cases in the CoE, and one (so far, with two others pending) in the EAC. The institutional design of democratic conditionality has thus operated in an environment characterized largely by a stable membership of IOs which pre-dated the introduction of these provisions.

Practice shows that European organizations had the highest record in terms of increasing membership. As for the Council of Europe, only two cases (Belarus and Kazakhstan) had their applications rejected for not fulfilling democratic/human rights criteria; in the case of Belarus, its application has been frozen since 1997. Additionally, in 1995 the CoE suspended the procedure for Russian accession because of Russian actions in Chechnya. The Council of Europe resumed the procedure shortly afterwards, and Russia became a member in 1996. The CoE treated the Croatian

application similarly: in April 1996, PACE had adopted a decision in favour of Croatian membership, but President Tudjman's policies in conflict with Council of Europe principles put Croatia's accession on hold. In November 1996, Croatia became a member. Reflecting on the functioning of democratic conditionality of the CoE, the then-Secretary General of the Council, Daniel Tarchys, underlined the potential for transformation of these provisions. He suggested that although Central and Eastern European states did not have spotless records of democracy when admitted to the Council, the commitments accompanying Council membership would expand and solidify democracy in those states (Tarschys; 1995) .

The practice of the EU mirrors that of the Council of Europe, not least because membership of the latter also acts as a clearing house for acceding to the former. The EU has not rejected any applicant state so far on grounds of a lack of democratic credentials.⁴ Far from being an indicator of a lax policy, several examples prove that applicant states have obeyed the strict conditionality policy on democracy that the EU enforces. For instance, in the 1990s, the EU "strictly enforced" the conditions of its Association Agreement with Slovakia, as a result of President Vladimir Mečiar's mistreatment of the Hungarian minority. The EU also formally removed Slovakia from its first list of applicant countries.

As for the other organization with a significant increase of membership, the AU, all new members except for Sudan (2011) acceded before the transformation of the former OAU into the AU and thus before the introduction of democratic conditionality. Given the internal heterogeneity of the AU and the majority decision on membership, no great expectations may be placed on democratic conditionality.

Within MERCOSUR, the case of Venezuela proves to some extent the value of democratic conditionality, but also its limitations. After abandoning CAN, Venezuela applied for admission to MERCOSUR. Although the member states agreed on it in 2006, the Senate of Paraguay blocked accession. While the government of Fernando Lugo and the Congress supported accession, the *Partido Colorado*, who controlled the Senate, consistently rejected the ratification of the accession treaty, arguing that Venezuela is not a fully democratic state. Senators referred to the democratic imperative included in MERCOSUR's Democratic Commitment and the Ushuaia Protocol. Venezuelan membership became possible during the suspension of Paraguay (decided by the Presidents of Argentina, Brazil and Uruguay), which in effect rendered unnecessary the Paraguayan Senate's ratification of the accession Protocol.

The EAC is the only other organization (and the only African one) which has scrutinized membership applications in terms of democratic conditionality. The Republic of Sudan saw its application declined because Tanzania and Uganda objected to its mistreatment and discrimination of black Africans; and other human rights violations, religious intolerance, blatant racism and warmongering.⁵ South Sudan and Somalia also applied, and the EAC created a verification committee (made of one representative of each state plus three independent members) which issued a Report on fulfilment of the criteria for admissibility. The Report advised that the application should be put on hold pending key institutional reforms in South Sudan.

2.3. The effects of the conditionality clause

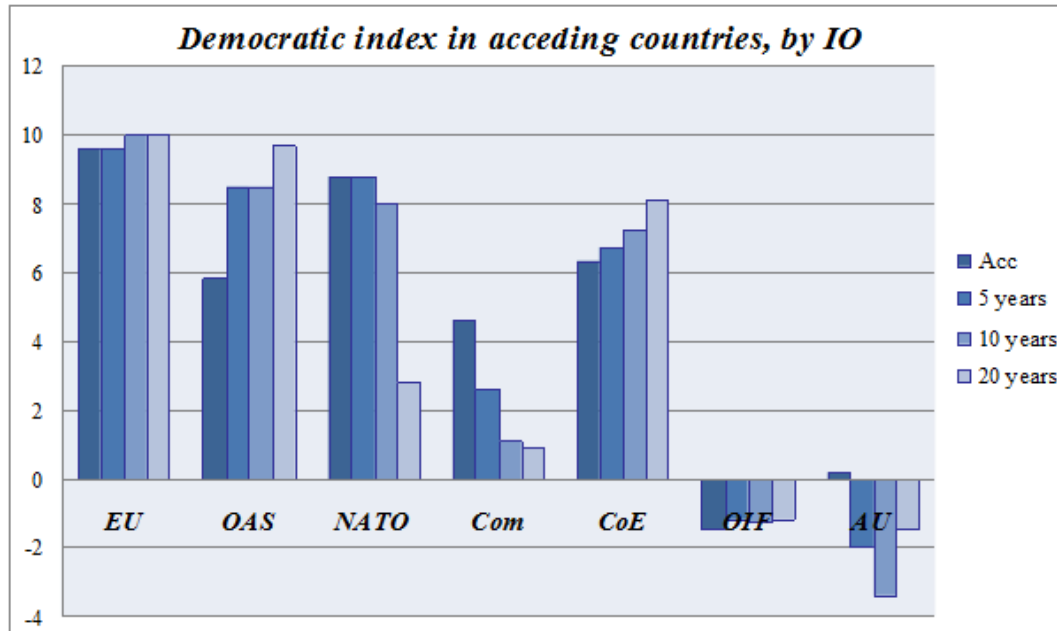
Paul Pierson (2000) warned about the functionalist approach, whereby the effects of institutions explain the reason for the creation of those institutions. He refers to several factors that may alter this

⁴ Morocco is the only case of rejection, but the reason was geographical: it was considered not to be a European state. In its negotiations Turkey, on the other hand, faces constant criticism for its democratic and human rights record. However, a formal rejection has not happened so far, and Turkey is subject to strict enforcement of EU conditionality.

⁵ EAC split on Khartoum's bid to join community, serious opposition from Tanzania and Uganda <http://www.jamiiforums.com/jukwaa-la-siasa/174141-eac-split-on-khartoum%92s-bid-to-join-community-serious-opposition-from-tanzania-and-uganda.html>

functionalist assumption: actors may not act strategically, calculations may only consider the short-term horizon, and there may be unintended effects of institutional design. Despite those criticisms, the data show some interesting relationships between cause and effect. Table X below summarizes the findings.

Figure 1



The figure indicates the change in the democratic quality of countries acceding to IOs with formal accession clauses, using a four point measure: democracy index at accession, democracy index after 5 years, democracy index after 10 years, and democracy index after 20 years. The results show some interesting insights. Firstly, states acceding to organizations that have rigorously applied a democratic conditionality clause (e.g. EU, CoE and OAS after 1967) have improved their democratic index from period to period. NATO only applied strict democratic conditionality after 1992, and data are not available for 20-year membership for East European countries. These countries provide the clearest case of democratic improvement for the organization but, in the absence of the 20-year data, the graph records NATO's inability to deal with authoritarian involution in Greece and Turkey after their accession in 1952. AU membership has grown, but prior to the introduction of democratic conditionality, which may apply in future to new applicants. The graph reflects the declining democratic quality of acceding states. The table also includes data for the Commonwealth of Nations, which added the clause in 1997; but it only started to apply it after 1997 (effectively, only to one member, i.e. Rwanda). The table also refers to the OIF which, although it does not have a democratic membership clause, has seen a substantive additional growth in membership, together with an active democratic conditionality suspension policy. For the two of these, results show that in general new members have had a decreasing democratic quality.

3. Enforcing the democratic requirement: suspension of membership (institutions and instruments)

Why do states create the commitment to respect democracy as a mechanism for regulating membership rights? These kinds of provision raise a key problem of institutional design (Koremenos et al; 2001a): enforcement. While conditional membership provisions scrutinize the democratic credentials of states at the moment of accession (and provide information on state's future behaviour,) they cannot, on the other hand, control deviation from the original fulfilment of conditions. IOs and

member states may therefore face an additional dilemma: how can they ensure that a current member honours the original conditions of membership? In order to resolve this dilemma, IOs may create enforcement mechanisms which, in relation to membership, have two specific forms⁶: expulsion and suspension.

Expulsion is a decisive act which terminates membership, while suspension will last until the circumstances that provoke it change (Schermers and Blokker; 2011: 111-114); and it may be very costly, since it may harm the organization as much as it harms the offending member. Expulsion is very uncommon both in terms of constitutional provisions and practice. In relation to formal legal provisions, only a limited number of IO constitutions mentioned the possibility of expulsion,⁷ and as far as practice is concerned, prior to 1987, only four cases of expulsion of UN agencies took place: Czechoslovakia was expelled from the IMF and the World Bank; and South Africa from UP and ITU. The number of cases may grow if withdrawal is also considered, since the boundary between expulsion and withdrawal is a tenuous one (for instance, Greece withdrew from the Council of Europe in 1970 following the Colonels' coup, but this was a result of the suspension procedure initiated within the Council). Koremenos et al. (2001b: 1056) concluded that the scarce use of expulsion renders enforcement through membership largely irrelevant, since deviations are apparently rarely punished in this way.

Suspension offers an attractive alternative: offending states may be coerced into adapting their behaviour to the conditions set by the organization that they have violated. But suspension also presents an enforcement dilemma: on the one hand, states do not wish to restrict their unfettered sovereignty by creating supra-state commitments which they cannot control. Additionally, suspension clauses do not externalize costs: they potentially affect current members who may have to bear the costs, rather than externalising them to third parties. Moreover, cost-bearers may be undefined, since no state can calculate *a priori* to whom it may apply (as proved in the case of the triggering of diplomatic sanctions against Austria in the EU).

While these arguments provide states with powerful reasons to resist such clauses, other arguments support them: a suspension clause guarantees an efficient enforcement mechanism for the initial democratic requirement and, in this way, suspension clauses also contribute to reducing uncertainty about the future behaviour of a state by locking it into specific features consistent with the objectives of the organization (and other states). Suspension clauses increase the costs for a given state if it defects from its initial commitment. Reneging on conditions set out by an IO can be costly for democratic states, serving thus as a deterrent to influential groups within government that may have reason to derail liberal reforms; it thus increases the credibility of commitments to sustain such programs (Mansfield and Pevehouse; 2006: 143). In summary, suspension may be presented as a mechanism for enforcing conditional membership over time. We could call this the "consistency expectation".

In accordance with the foregoing argument, expulsion may not be a common provision given its costs; but when it happens, it may be closely associated to IOs which contain some form of conditional membership provision. The data set of 85 IOs shows that Treaties do not usually contain provisions on suspension, and the safest conclusion is that suspension is excluded. When suspension provisions do exist, they refer most commonly to failure to comply with financial obligations (e.g. paying dues).

As the "expectation of consistency" anticipates, (i.e. conditional membership correlates with suspension because of breach of membership conditions), most IOs with democratic conditional

⁶ Of course, IOs may adopt other kin of sanctions.

⁷ UN Charter (art. 6); IMF (Art. XXVI section 2 plus Section 22 By Laws); World Bank (article VI Section 2 plus section 21 By laws); IFC (Art. V section 2(a) plus art. 18 By Laws); IDA (article VII Section 2(a); Council of Europe (Article 8); League of Arab States (art. 18); Asia-Pacific Space Cooperation Organization (article 32); Shangai Cooperation Organization (art. 13)

membership also have a suspension clause. This is the case of AU, CAN, ECOWAS, EU, MERCOSUR, OAS and UNASUR; although a number of organizations contain clauses that permit the suspension of membership, as a consequence of non-fulfilment of “general obligations” (which may leave a wide margin for interpretation). In cases such as the Council of Europe, this could be interpreted as consistent with democratic conditionality for membership, although it is dubious in other cases.

Several organizations have acquired *a posteriori* a provision for suspending membership because of the violation of democratic credentials. In fact, most of the instruments quoted in Section 2 above (democratic conditioned membership) function for possible membership suspension. This evolution also took place mainly in the 1990s and 2000s, and it reflects the increasing legitimizing value of the IOs’ guardianship of democracy for transitional and or weakly democratic states. But these provisions also function simultaneously as mechanisms for increasing certainty about the future behaviour of these states.

The clearest (and most radical) case of evolution is that of the African Union in which, increasingly, consensus grew on the need to revise the original OAU concepts of sovereignty and non-interference in line with the view of sovereignty as responsibility (Loetze et al. 2012: 5). Diffusion acted as a powerful trigger for the inclusion of suspension provisions: according to some sources,⁸ the AU “copied and pasted” the OAS provision which Art. 9 of the Washington Protocol had included in 1992.

Table 3 Typology of suspension clauses

Suspension as a consequence of non-fulfilment of general obligations	Suspension as a consequence of non-fulfilment of financial obligations	Suspension as a consequence of offences against human rights/rule of law/democracy	No specific provision on suspension
AEC, COMESA, CIS, CoE, EAC, ECOWAS, EAEC, EU, IAEA, IMF, IOM, OPCW, GUAM, SADC, SCO, UN, UNWTO	AEC, AU, COMESA, CAN, CoE, ECCAS, IGAD, IAEA, IHO, ILO, IMO, IOM, INTERPOL, PICES, OPCW, OIC, SADC, UN, UPU, WIPO, WHO, UNWTO	AU, CAN, ECOWAS, EU, MERCOSUR, OIF, OAS, UNSAUR	AAEU, ACS, Arab League, ASEAN, Benelux, CARICOM, GCC, ECO, EFTA, EPO, Helsinki Convention, IOR-ARC, ICES, IMSO, KEDO, LAIA, NAFTA, NATO, OECD, ODECA, OECS, OEI, OPEC, SICA, SAFTA, SAARC, SEATO, UMA, WAEMU, WAMZ, WCO, WEU, WTO

⁸ According to McMahon; 2012 at fn 12, Malian President Alpha Oumar Konare, at the time also President of the Organization of African Unity, attended the "Emerging Democracies Forum" in Sana'a, Yemen in June of 1999. He there learned about the OAS provision on suspending governments which came to power through undemocratic means. He then asked his embassy in Washington D.C. to procure the exact language of the document from the OAS headquarters, from which he then drew in proposing the relevant OAU language.

3.1. Institutional rules for implementing suspension clauses

Implementation of suspension clauses may follow a scrutiny system or an incidental one. The former depends on periodic scrutiny of domestic compliance with conditionality requirements, while the second is triggered ad hoc when specific events seem to threaten democracy in a member state.

- Permanent scrutiny systems. The Council of Europe issues public reports on member states' compliance with democracy requirements. The only practical case of suspension happened before the CoE initiated its reports and it involved the Parliamentary Assembly, the European Commission for Human Rights and the Committee of Ministers.

Similarly, the OIF Declaration of Bamako (2000) introduced a permanent review of democratic practices and respect for human rights which could activate the suspension mechanism. The General Secretary convenes the Council of Ministers of the Francophonie. The Presidential Council may decide, firstly, a number of reputational sanctions (such as condemnation) and, afterwards, it may agree on suspension, which is almost automatic if there is a coup d'état against a democratically elected government.

- Incidental systems. Commonly, IOs lack a precise procedure for compliance with conditionality leading to an eventual suspension because of its breach. They react on the spot in the case of serious breaches of democratic conditionality. At most, they identify a body, most commonly intergovernmental, in charge of taking the decision. In the AU, the Peace and Security Council (PSC) has decision-making power regarding issues concerning breaches of democratic conditionality. The Commonwealth of Nations has a similarly appointed body, the Commonwealth Ministerial Action Group (CMAG), which meets regularly to address potential breaches of the Harare Declaration. Suspended members are not represented at meetings of Commonwealth leaders and ministers, although they remain members of the organization. The common characteristic is that the final decision is taken at the highest level, more so in the absence of any intermediate procedural step (as is the case of ECOWAS, where suspension decisions have been adopted following extraordinary meetings).

3.2. Practice of suspension because of democratic breaches

The practice of suspension provides additional insights into institutional design. Practice of suspending membership has been traditionally restricted to cases of non-fulfilment of financial obligations.⁹ However, practice of suspension of membership because of breach of democratic commitments has increased significantly in the last two decades and it extends even to regional schemes lacking a specific provision on the issue (SADC in relation to Madagascar in 2009 or SICA in relation to Honduras). Even the Arab League, normally oriented towards sovereignty and non-intervention, applied the suspension of membership in relation to Libya and Siria, both in 2011.¹⁰

Cases of suspension of membership (36) in relation to breaches of democratic principles are concentrated in continental (e.g. AU, CoE and OAS) and identity-framing organizations (e.g. OIF and the Commonwealth). Significantly, most of the cases of suspension are concentrated in African organizations and/or African states, particularly after the 2000s. Some countries accumulate more than one suspension, and/or suspension from more than one organization.

⁹ The WHO has suspended the voting rights of eight members and is considering a further nine, while the IAEA has suspended fourteen others. In the past, the UN deprived Haiti (1963) and the Dominican Republic (1968) of voting rights, but in 2012 it accepted the voting rights of six member countries in arrears.

¹⁰ In 1979, the Arab League also suspended Egypt's membership as a sanction for signing a peace agreement with Israel. However, the constitution of the Arab League only provides for expulsion, not suspension. In 1989, the League re-admitted Egypt.

Table 4 Suspension of membership in IOs because of democratic conditionality

Organization	Suspension clause	Suspended members
African Union (formerly OAU)	Y	10 Togo (2001); CAR (2003); Mauritania (2005, 2008), Madagascar (2009), Guinea (2009); Mali (2009; 2012)), Niger (2010) Ivory Coast (2010), Guinea Bissau (2012)
CAN	Y	0*
CARICOM	N	1 Haiti (2004)
Council of Europe	Y (implicit)	1 Greece (1969)
Commonwealth of Nations	Y (implicit)	7 Fiji (1987-1997**; 2000 and 2006); Nigeria (1995); Pakistan (1999; 2007); Zimbabwe (2002)**
EAC	Y (implicit)	-
ECOWAS	Y	6 Togo (2001); Guinea (2009); Mali (2009 and 2012); Niger (2009); Ivory Coast (2010)
EU	Y	-
MERCOSUR	Y	2 Paraguay (1996; 2012)
NATO	N	-
GUAM	Y	-
OAS	Y	2 Cuba (1962); Honduras (2009)
OIF	Y	4 Mauritania (2008); Madagascar (2009); Guinea Bissau (2012); Mali (2012)
SADC	Y (implicit)	1 Madagascar (2009)
SICA	N	1 Honduras (2009)
UNASUR	Y	1 Paraguay (2012)

* Chile withdrew unilaterally on 30 October 1970 because of disagreement with CAN Decision No. 24 on the treatment of foreign capital which had a marked protectionist character.

** Fiji withdrew from the Commonwealth of Nations between 1987 and 1997, and Zimbabwe in 2003.

The Council of Europe suspended Greece in 1970 after a number of Recommendations and Decisions from the Parliamentary Assembly,¹¹ and two Reports on the legality of the suspension of constitutional order and torture from the European Commission of Human Rights. NATO, whose covenant does not contain a suspension clause, took a restrained attitude. The EU, in turn, has not applied its suspension clause even once, despite diplomatic skirmishes over Austria (1999) and reports on Hungary, Rumania and Bulgaria. In fact, some authors have called for a more militant EU approach to the defence of democracy in its member states.

African cases show an unclear overlap between suspension in continental and regional communities. Each of them has their own protocols with detailed provisions on how to act in the event of human rights violations or unconstitutional changes of government. In practice, the regional and continental levels often work in parallel. However, discrepancies between the normative standards embedded in the AU and the regional organizations complicate this. Thus, the African Union has suspended members because of breaches of democratic conditions in 10 cases between 2001 and 2012 and this has activated similar measures in African regional integration schemes: SADC (Madagascar, 2009); ECOWAS (Togo, 2001, Ivory Coast, 2010; and Mali, 2009) and OIF (Mauritania, 2008; Madagascar; 2009 and Guinea, 2009). ECOWAS has *unilaterally* suspended membership for three countries: Guinea-Bissau (2008), Niger (2009) and Ivory Coast (2009) following either coups d'état or fraudulent elections.

¹¹ PACE Decisions 346 (1967) and 385 (1968) and PACE Recommendations 547 (1969) and 569 (1969).

The Ivory Coast case illustrates the overlapping yet different approaches to suspension. While the AU initiated proceedings for suspension, ECOWAS moved much more quickly and suspended the Ivory Coast from all decision-making in the organization until a transfer of power had occurred. As the crisis continued, the positions of the AU, ECOWAS and UN increasingly diverged. While the AU adopted a more possibilistic position, seeking to find a political solution to the conflict, ECOWAS and the UN quickly came to set human rights concerns above the need to find a political solution to the stalemate, thus adopting a more strongly interventionist approach to bring about an end to the conflict.

The practice of suspension of American organizations shows a similar pattern of divergence between continental and regional organizations. In 1962, the OAS decided on the exclusion of Cuba from participation in the Inter-American System, arguing that “*the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system*”.¹² Six states abstained in the vote, since they questioned the authority of the OAS to take the decision in the absence of an explicit Charter provision. The OAS, though, seems to have taken the view that states which no longer satisfy the criteria may be suspended even in the absence of express Charter provision (Schermers and Blokker; 2011: 117). Cuban suspension terminated on June 3, 2009 after a vote by the foreign ministers of OAS member countries.¹³ The only other case of suspension happened in 2009, when the OAS suspended Honduras following a *coup d'état*.

American regional organizations have developed the practice of suspending membership independently of the umbrella of the OAS. MERCOSUR initiated this path in 1996 when it pressured against a military plot in Paraguay. Observers have noted the importance of MERCOSUR in enforcing its democracy condition: “*But for MERCOSUR, Paraguay would this year almost certainly have gone back to military rule, setting a dangerous precedent for Latin America*” (Economist 1996, S4; see also Dominguez 1998). Paraguay’s case illustrates how practice, in fact, inspired the norm since MERCOSUR member states concluded the *Commitment to Democracy* a few months after the attempted coup and the Ushuaia Protocol two years later. In 2012, MERCOSUR members appealed to the Protocol to deal with the decision of the Senate of Paraguay to oust President Lugo. MERCOSUR governments saw the decision as unlawful and undermining the country’s constitutional order; and in response governments activated the provision that allowed the suspension of the offending state from attendance at block meetings. UNASUR, which had a similar clause although with greater scope,¹⁴ adopted the same measures as MERCOSUR.

Organizations have also developed a practice of suspension without a specific treaty provision. CARICOM suspended Haiti in 2004 after the ousting of President Aristide. Suspension did not follow any procedure, and arose from personal contacts between CARICOM leaders. SICA also suspended Honduras in 2009 despite lacking a specific suspension provision.

¹² Resolution VI: Exclusion of the Present Government of Cuba from Participation in the Inter-American System, Eighth Meeting of Consultation of Ministers of Foreign Affairs, Punta del Este, January 1962. See <http://www.cidh.oas.org/countryrep/Cuba79eng/intro.htm>

¹³ AG/RES. 2438 (XXXIX-O/09)

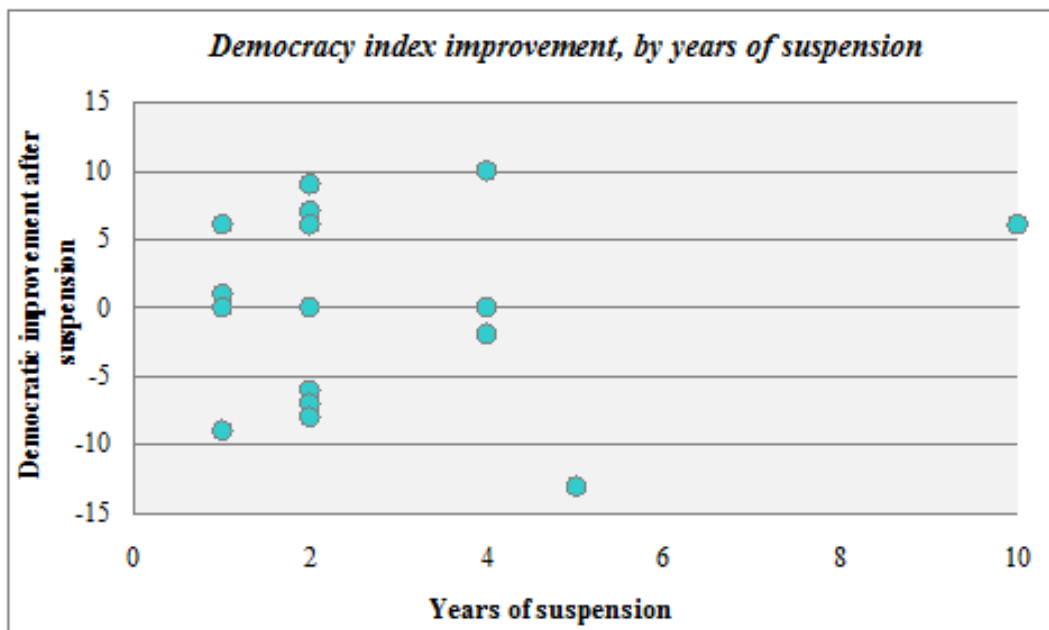
¹⁴ Decisión No.26/2012, Reunión Extraordinaria del Consejo de Jefas y Jefes de Estado y de Gobierno de UNASUR. In fact, Paraguay had not ratified the *Protocolo Adicional sobre Compromiso con la Democracia* and furthermore some of its parliamentarians had denounced it: “Parlamentarios de Paraguay cuestionan cláusula democrática de la UNASUR”. Comunicado de prensa de la Delegación de Paraguay del Parlamento del MERCOSUR. http://www.parlamentodelmercosur.org/innovaportal/v/5656/1/secretaria/parlamentarios_de_paraguay_cuestionan_clausula_democratica_de_la_unasur.html

3.3. Effects of suspension

Several practical difficulties limit an accurate appreciation of the effects of democratic conditionality suspension provisions. Firstly, the absolute number of cases is not large (N=36); and secondly they contain a certain circularity, since the same state may be suspended simultaneously by more than one organization. Thirdly, several of the cases are relatively recent and either suspension has not been lifted and/or there are no updated measurements in the Polity data set. This reduces the whole universe of available cases to 16.

With due caution, the following figure shows a positive relation between the duration of suspension and the improvement of the democratic quality of a state; and the strength of the relationship improves if the two outlier cases (i.e. Pakistan and Fiji) are removed.

Figure 2



4. Concluding remarks

Democratic conditionality accession (and suspension) provisions are, with the exceptions of the CoE and OAS, norms acquired by IOs after 1989. This was, in most cases, long after their creation, at a moment when geopolitical changes gave democratic ideals significant normative hegemony. Temporal introduction of democratic conditionality for accession meant that current members were not affected and could transfer the cost of conditionality to would-be members. However, the parallel development of democratic conditionality suspension clauses could potentially affect any of the members. Organizations trade off conditionality and sovereignty by means of implementing designs leaving a margin for interpretation by states of potential breaches.

Practice shows different patterns between accession and suspension: the three most demanding organizations in the implementation of accession (i.e. CoE, EU and OAS) are not the most active in the implementation of suspension. On the contrary, democratic conditionality suspension seems to be associated quantitatively with organizations (e.g. AU, Commonwealth of Nations and OIF) which did not apply democratic conditionality membership requirements.

Although this paper does not maintain a strictly functionalist interpretation (i.e. the function performed by an institution explains its origin), the effects of both provisions lend support to the rational design approach: on the one hand, organizations that have applied democratic conditionality for accession have seen how acceding members have improved their democratic quality; while those organizations which did not apply the provision (mainly because membership remained stable) have seen declining democratic quality in acceding members. As for suspension, there are difficulties in measuring effects, but impressionistic data on the effects of suspension and its duration show a tendency towards the improvement of democracy in suspended members.

Data

I have used the *Polity IV Project Data set* which contains data on 186 countries with populations greater than 500,000. Regimes are marked yearly using *concomitant qualities of democratic and autocratic authority* in governing institutions, rather than discrete and mutually exclusive forms of governance. The “Polity Score” captures the regime authority spectrum on a 21-point scale ranging from -10 (hereditary monarchy) to +10 (consolidated democracy). The Polity scores can also be converted to regime categories: authors recommend a three-part categorization of “autocracies” (-10 to -6), “anocracies” (-5 to +5 and the three special values: -66, -77, and -88), and “democracies” (+6 to +10); see “Global Regimes by Type, 1946-2006” above. The Polity scheme consists of six component measures that record key qualities of executive recruitment, constraints on executive authority, and political competition. It also records changes in the institutionalized qualities of governing authority. The Polity data include information only on the institutions of the central government and on political groups acting, or reacting, within the scope of that authority. It does not include consideration of groups and territories that are actively removed from that authority (i.e., separatists or “fragments”; these are considered separate, though not independent, polities) or segments of the population that are not yet effectively politicized in relation to central state politics.

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