

Alternate Norms: New Contestation Theory on Subsidiary Norms in the Changing World Order

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Abstract

Norm contestation theory is a significant innovation in constructivist research on dynamics and (d)evolution of liberal international norms. Yet a wide blindspot exists where norms originating from the world's regions, or what scholars call "subsidiary norms," that challenge liberal norms and world order are unexplored or described as regional powers' struggles to safeguard their independence or promote preferred international norms. This article stimulates a healthier consciousness for the study of such norms, which I name *alternate norms*. Tapping into concepts of contested subsidiarity and changing world order, I develop a new contestation theory on subsidiary norms: *regional powers make alternate norms to set up primacy and dominate the governance of global issues within a geographical/spatial boundary. Alternate norms underline regional powers' strategic narratives and conceptions of the world; they are structurally robust and fittest for underpinning a more legitimate, just, and diverse world order.* I illustrate the new theory by focusing on norms emerging from Africa, especially those enshrined in the African Union's legal and official documents. The data show that regional powers have created alternate norms on seminal subject areas of international studies and policy interests, including humanitarian intervention, international criminal justice, and international organization authority/sovereignty.

Introduction

Three landmark theoretical trends encapsulate innovations in constructivist research on dynamics and (d)evolution of liberal international norms in IR: norm emergence, norm contestation, and norm constellation. The first trend scholars (Finnemore and Sikkink 1998) explore norm appearance and internalization. The second trend scholars (Florini 1996; Wiener 2014, 2018) study norm change. The third trend scholars (Winston 2018; Lantis and Wunderlich 2018; Fehl and Rosert 2020) research norm structure or clusters and the interconnected hierarchical arrangement that often results in norm activation problems, such as collision (Kreuder-Sonnen and Zürn 2020). I stress that norm contestation theory is invariably the most significant innovation but the almost exclusive focus on liberal international norms has opened a wide blindspot where norms originating from the world's regions are unexplored and understudied.

In many ways, contestation theory's compelling accounts of norm endurance or disappearance in the face of sustained struggles or challenges underpin its innovative appeal. Florini's (1996, 367) "neo-Darwinian" theory presents an evolutionary explanation of a norm's survival over other rivals. It argues that 'norms, like genes, are "contested" – that is, they are in competition with other norms that carry incompatible instructions.' The result was that "one of the contestants prevails absolutely and the other disappears." Wiener's (2014) more popular theory relates to social conditions affecting a norm's progression like when state or nonstate actors dispute a norm's validity or application. Through this Darwinian-like process of social selection "unfit" norms eventually die and robust ones survive, if in one shape or another (Panke and Petersohn 2012, 2016). In this sense, the study of norm persistence or demise is more interesting. Yet, a wide blindspot exists where norms emanating from the world's regions that challenge liberal norms and world order are unexplored. Even earlier research (Katzenstein 1993), and there are now a growing number of studies (Chen and Yang 2022), that underlined

such challenge, and the absence of a unified normative structure is uncultivated in contestation theories, which severely limits understanding of norm dynamics in the changing world order.

The idea of norm subsidiarity (Acharya 2011, 2018) in the global South (Asia and Africa) is the best for any sustained attempt to apply the contestation method to study norms arising from the world's regions. However, the concept casts regional powers as weak actors incapable of posing a significant challenge to liberal norms and world order. To be sure, norm subsidiarity describes “a process whereby local actors create rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors” (Acharya 2011, 95-6). It is ‘a response to the “tyranny” of higher-level institutions (including multilateral organizations or great power management) in global rule-making’ (Acharya 2018, 61). As critiques (Wolff and Zimmermann 2016; Zimmerman, Deitelhoff, and Lesch 2018) have rightly pointed out, norm subsidiarity simply legitimizes international norms. As Wolff and Zimmermann explained: “contestation leads local actors to reject specific external ideas and try to establish ‘subsidiary’ norms to counter outside influences or promote other international norms they consider more universal.” They concluded that contestation was just a “fairly conventional... means to achieve better dialogue and a more legitimate global order,” which “supports the consolidation of a liberal paradigm in a more comprehensive form” (Wolff and Zimmermann 2016, 525, 533). In other words, contestation is yet to explore norms materializing from the world's regions that challenge, rather than strengthen, liberal norms and world order. This is a critical omission in constructive theories and research on norm dynamics and (de)evolution in international relations.

This article makes a course correction to stimulate a healthier consciousness for the study of norms springing from the world's regions, which I name *alternate norms*, that challenge liberal norms and world order. My goal is to explain alternate norms' purposes, core features, potential influences, and significance in the changing world order that is characterized

by deep divisions and power shifts to the regions. To do so, I develop a new contestation theory on subsidiary norms, explaining that: *regional powers make alternate norms to set up primacy and dominate governance of global issues within geographical and spatial boundaries, or regions. Alternate norms represent most vividly regional powers' strategic narratives and conceptions of the world. Alternate norms are structurally and characteristically robust because regional powers enjoy substantive legitimacy. Thus, alternate norms are fittest for underpinning a more legitimate, just, and diverse world order. More significantly, alternate norms parallel liberal international norms and pose the most fundamental challenge to the global West's strategic narratives and conceptions of the world.*

I use the concepts of contested subsidiarity (Slaughter 2009) and changing world order (Ruggie 1989; Hurrell 2007; Rosenau 2018; Ikenberry 2024) to frame the new contestation theory on subsidiary norms. The insight is that authority (or subsidiarity) in the modern international system is now contested, and this contestation has led to a world divided into regions, lacking a unifying power. Then I focus on norms originating from Africa, especially those adopted by regional powers and enshrined in the African Union (AU)'s legal and official documents. (This study replicates data from Ifediora [2021].) The data show that regional powers have created alternate norms to prove primacy and dominate the governance of global issues, including in the following thematic areas of international studies and policy concerns: humanitarian intervention, international criminal justice, and international organization authority/sovereignty.

This study contributes primarily to reimagining innovations in constructivist theories and research on dynamics and (d)evolution of norms by broadening the contestation trend to address the wide blindspot created by the almost exclusive focus on liberal norms and the order such norms undergird. It inspires a vibrant awareness of alternate norms in a world where authority (subsidiarity) has dispersed to the regions and regional powers hold different strategic

narratives and conceptions of the world and rules that should govern it. It supports a more comprehensive framework for the study of norm dynamics – that is survival or death. Indeed, the alternate norms theory offers a clear choice, recasting contestation as a fundamental challenge to liberal norms, instead of strengthening and solidifying the structural foundations on which they are based. The profound implication is that in the changing world order, deeply divided into the world of regions, what we have been studying as international norms becomes the global West’s norms relevant only in a part of the world or region where such norms have had their greatest resonance. As Deudney, Ikenberry, and Postel-Vinay (2023, 10) observed, “These [international] norms commonly cast themselves as universal, but their actual sway was never more than regional.” The regional relevance of liberal norms is more palpable in the new world order that Russia’s invasion of Ukraine all but created in which alternate norms gain ever prominence.

This study also contributes to the norm constellation trend by broadening the dimensions of norm collision. First, alternate norms can mediate problems of activating international norms in a world’s regions by showing primacy and dominance. Second, and more pertinent, the next frontier of norm collision is already between alternate norms and international norms. Just as regional powers activate alternate norms, ex-global powers would look to activate international norms, and so concurrent activations would cause collision. The result would be a contestation over norm priority between alternate norms and international norms. Such contestation would become more prominent. As we shall see in the illustrative section below, the AU is now contesting the priority of the alternate norm on humanitarian intervention: the right of intervention or the “right to protect” (Ifediora 2021) over the responsibility to protect (R2P). Given that the principle of subsidiarity situates authority in organizations or institutions closest to those that would be affected by the action to be undertaken, alternate norms would increasingly enjoy primacy. Powers outside a region may

challenge alternate norms but such contestation is less likely to result in “norm impasse” but more likely in “norm clarification” (Stimmer 2019) because external powers would progressively appreciate the significance of alternate norms in a world that is already divided into regions. This dimension of contestation is a promising new area for future research and innovation.

This paper includes three main sections. The first section discusses the concepts that frame the new contestation theory on subsidiary norms. The second section illustrates alternate norms by exploring norms emerging from Africa. The third section focuses on the features of alternate norms and why such norms are structurally robust and fittest to advance a more legitimate, just, and diverse world order.

Subsidiarity in the Changing World Order

Drawing on concepts of contested subsidiarity and the changing world order, this section argues that the division of the world into regions shows regional powers’ consolidation of primacy and dominance over governance of global issues within their geographical or spatial spaces, otherwise “regional worlds.” In short, subsidiarity (or authority) is now irrevocably situated in such spaces in the new world order.

Subsidiarity is a relatively simple but controversial concept. Subsidiarity means the authority to make decisions. For instance, the Cambridge English Dictionary defines subsidiarity as “the principle that decisions should always be taken at the lowest possible level or closest to where they will have their effect, for example in a local area rather than for a whole country.” In practice, however, subsidiarity has become controversial because of different uses and interpretations (for helpful overviews of contending perspectives on subsidiarity, see Follesdal 2014; Barber and Ekins 2016; Cahill 2017). Much of the issue is that subsidiarity is highly context-dependent, with different meanings in the catholic church doctrine (Murray

1995), regional governance (Kersbergen and Verbeek 2004; Knight and Persaud 2018), global governance (Jachtenfuchs and Krisch 2016; Reinold 2019) and the world order (Slaughter 2009). The general sense in which subsidiarity has been understood in the world order where actors with relatively superior material resources dominate is captured more succinctly by Barber and Ekins (2016, 5): "...at its core [subsidiarity] requires higher (larger) group to aid lower (smaller) groups, rather than to obliterate or subsume them." The world order as embodied in the UN system is illustrative.

Viewed through the lens of the realist tradition (Waltz 2010), subsidiarity in the international order as represented in the UN system is tightly linked to economic and military resources of the five permanent members of the Security Council. From this understanding, regional powers and organizations like the AU are subordinates expected to adopt, adapt, and implement norms created by global powers and enshrined in global organizations and institutions (Hass 1971; Douhan 2016). Liberal international norms tend to reflect the preferences of actors possessing material power. So, subsidiarity in this context concerns relations between UN institutions, especially the Security Council, and regional organizations or "arrangements" under Chapter VIII of the UN Charter. Here, regional organizations such as the AU, Association of Southeast Asian Nations (ASEAN), and Organization of American States (OAS) are subordinate actors or agents of the UN, who must implement decisions adopted through or mandated by UN institutions (Barnett 1995; O'Brien 2000; Baert, Felício, and Lombaerde 2012; Mingst, Karns, and Lyon 2022). Subsidiarity relates to the role of regional arrangements in helping the UN Security Council to fulfill its primary responsibility for the maintenance of international peace and security. The idea was that the UN – the larger organization enjoying considerable material resources (military and economic) of the five permanent members of the Security Council – should empower regional organizations – the smaller groups closer to sources of threats to international peace and security – to manage such

threats. This conception and practice of subsidiarity are well elucidated in the famous report, *An Agenda for Peace*, issued by then UN Secretary-General, Boutros-Ghali, who noted that:

Regional arrangements or agencies in many cases possess a potential that should be utilized in serving the functions covered in this report: preventive diplomacy, peace-keeping, peacemaking and post-conflict peacebuilding. Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security (United Nations 1992, 64).

In doing so, regional organizations act as “agents” of the Security Council and therefore should adopt or adapt and implement liberal norms created by global powers and enshrined in UN institutions. Although subsidiarity has been associated with the distribution of authority, burden-sharing, and division of labor (Mingst, Karns, and Lyon 2022), but only in the sense that the bigger group (UN) empowers smaller groups (AU, ASEAN) and then delegates tasks to be performed per norms developed by the former.

Existing norm contestation accounts, particularly norm subsidiarity (Acharya 2011), have captured the above understanding of subsidiarity in the world order, which has been presented as a means of contestation whereby weaker regional actors seek to protect their regions from dominance by more powerful global actors or seek greater recognition in global organizations and governance structures like the UN system. However, as critiques (Wolff and Zimmermann 2016; Zimmerman, Deitelhoff, and Lesch 2018) have pointed out, norm subsidiarity as a component of contestation theory was simply an organized form of argumentation for achieving better dialogue, and the legitimation and consolidation of liberal norms, as well as a mechanism for strengthening the “old” world order structure in which such norms have their meanings and effects. Unexplored and unincorporated in contestation theory are norms originating from the world’s regions that challenge liberal norms and world order. Equally important, earlier research showing norms that reflect the changing structure of world

order are uncultivated. In particular, as Katzenstein (1993, 65) observed in the context of Europe, East Asia, and America:

... these changes in world politics tend to reinforce a new political regionalism that expresses different norms, which, in the foreseeable future, are unlikely to be assimilated fully into one normative global order.

Interestingly, Katzenstein's research and observation appeared in the period that most scholars considered as the peak for liberal norms. The problem was that norms emanating from the world's regions that challenged international norms were vastly omitted in innovations in constructivist norm theory, thereby gravely limiting understanding of norm dynamics in international relations. To inspire a stronger cognizance for the study of such norms, I turn to a contemporary, alternative reading of subsidiarity that encompasses the changing world order.

Specifically, I tap into Slaughter's (2009) reading of subsidiarity in the "new world order." Unlike the subsidiarity outlined above, Slaughter's conception does not assume correlations between material power, dominance, and subsidiarity. Instead, subsidiarity as a principle of locating authority to make decisive decisions on interventions has become a matter of feasibility based on rational choices to achieve the best decisions toward the desired outcomes. In this new understanding, subsidiarity is contested so that the determinism inherently expressed in the "old world order" with the focus on material power and authority was no longer significantly correlated. As Slaughter explained:

[Subsidiarity] is a principle of locating governance at the lowest possible level—that closest to the individuals and groups affected by the rules and decisions adopted and enforced. Whether this level is local, regional, national, or supranational is an empirical question, dictated by considerations of practicability rather than a preordained distribution of power (Slaughter 2009, 30).

For emphasis, subsidiarity is contested in the changing world order, and this fresh conception underscores the rationale for situating subsidiarity – that is, efficiency. The salient point is that subsidiarity means, quite simply, that the decisive decision-making authority should be placed in organizations, institutions, or people nearest to the impact of the decision or rules to be implemented. In this new conception of subsidiarity and changing world order, when contextualized within the UN and its institutions, especially the Security Council, subsidiarity at the global level is no longer a given; rather, subsidiarity is a matter for discussion and negotiation between larger/higher and smaller/lower groups. This new model of subsidiarity is reflected in deliberations between the UN and the AU on their partnership in peace and security. For instance, the Joint UN-AU Framework for an Enhanced Partnership in Peace and Security emphasizes the importance of “contrasting their respective doctrines, policies, and practices [as well as norms] with a view to a more systematic complementarity” (United Nations 2017, 3; see also United Nations 2022). Both organizations recognize their differences and seek to reconcile them, although some studies (such as Nathan 2017; and Reinold 2019) have suggested the inevitability of subsidiarity in the world’s regions.

My conceptual contention is that subsidiarity is contested in the changing world order and is reflected in the deep division already underway in the international system (Hurrell 2007; Rosenau 2018; Friedberg 2023; Deudney, Ikenberry, and Postel-Vinay 2023; Ikenberry 2024). In other words, subsidiarity (or authority) in the region is now a structural fact, and the essence of this *fact*, I stress, is what scholars have captured when conceptualizing the changing world order in the following terms: “regions as globes” (Ruggie 1989), “a world of regions” (Katzenstein 1993), “many worlds” (Hurrell 2007), “world of blocs” (Friedberg 2023), “multiplex world order” (Acharya, Estevadeordal, and Goodman 2023), and “three worlds” (Ikenberry 2024). In this spatial, boundary-less world’s regions, powers occupy, dominate, and advance their rules, norms, or policies to influence the evolution of the international structure.

The “three worlds” – the global West, the global East, and the global South – Ikenberry describes puts the changing world order in a sharper perspective:

Going forward, world order may be defined by the struggle between these three groupings, but no one will ‘win’ this struggle. This is because each of these groupings carries with it deeply held political ideas and projects, rooted in its global position and developmental circumstances, that will not disappear any time soon. Each, in effect, has its own set of conceptions about how modernity will and should unfold. In other words, it is hard to imagine another ‘global liberal moment’ like the 1990s, when states and societies around the world all agree on a common vision of modernity or universal conceptions of human rights. A certain irreducible political and ideological pluralism will long endure (Ikenberry 2024, 123).

In this changing world order, or what I would describe as emerging *alternate worlds*, I hold that regional powers make alternate norms that reflect their strategic narratives and conceptions of the world. Alternate norms underpin regional powers’ ideas, doctrines, policies, and practices, setting up subsidiarity or primacy in regional organizations and institutions. Differences in interpretations of the world perpetuate the notion of alternate worlds, causing competition, or what Deudney, Ikenberry, and Postel-Vinay (2023, 2) call “struggles over world order” or as Ikenberry (2024, 123) notes, fights “over the basic rules and norms of world order.” Pertinently, in the divided world today, there is no single, universal normative order, and perhaps there have never been such universal norms binding the world’s regions together (Katzenstein 1993).

The modern international landscape enjoys rich and diverse powers having and exercising varying degrees of authority and control that are not based on just material resources like military and economic sources, but also on substantive legitimacy. As such, regional powers rarely follow the realist governance script; instead, these supposedly subordinate actors make alternate norms to establish primacy, and, crucially, to challenge liberal norms and the

West's conception of world order. Notably, regional powers are not necessarily "weaker" players in the international system; rather, such actors tend to dominate or claim dominance within their regional worlds in which they make and apply alternate norms. Significantly, regional powers act through regional organizations or institutions to make alternate norms as a means of proving primacy for decision-making nearer to the institutions that would be most impacted by actions to be taken.

In the changing world order, subsidiarity at the higher level (e.g., the UN) is no longer a given; rather, subsidiarity is now contested – that is, it is open to negotiation with ex-lower-level actors (e.g., regional organizations) and is, therefore, more reflective of change in the international system. The actions and practices of regional powers demonstrate subsidiarity at the world regions, whereby such actors situate primacy for decision-making in regional organizations and institutions. For emphasis, granted that smaller/lower groups or regional powers and organizations, mostly associated with the global South but certainly including the global East and West, have always enjoyed subsidiarity in norm-making (Acharya 2011), my conceptual contention is that these groups and powers make alternate norms to regulate international issues in spite of higher/larger groups who may have created liberal international norms to govern the same issues.

To recap, subsidiarity means that authority to make decisions should be placed in organizations and institutions closer to actions or impacts. The changing world order shows regional powers' authority to govern a part of the world and alternate norms underpin their primacy and dominance. Therefore, alternate norms pose a challenge to liberal international norms and would increasingly enjoy primacy in the respective regional world where the legitimate authority to govern has shifted. Diversity in the new world order means that various actors or groups of actors with unique competencies perform governance functions and leadership roles in important global matters and regional powers make alternate norms that

show their conceptions of the world and how they govern in that part of the world we commonly refer to as regions.

Alternate Norms

This section applies the new contestation theory on subsidiary norms in the global South, focusing on Africa. It examines the AU's norm-setting instruments, selecting three major subject areas of international studies and policy interests for analysis. These are humanitarian intervention, international criminal justice, and international organization authority/sovereignty. The data show that regional powers have made alternate norms to set up primacy in regional organizations and institutions (e.g., the AU and the Assembly of the AU, respectively). These alternate norms parallel liberal norms and pose a fundamental challenge to the liberal world order as conceived by regional powers in the global West.

Norms of International Criminal Justice

The part of international criminal justice of interest concerns the prevention and punishment of genocide and atrocities as outlined in the Genocide Convention and the Geneva Conventions, which had been subjected to the norm of Heads of State immunity permissible under customary international law. However, around the turn of the century, scholars, practitioners, activists, and advocates entertained the idea that the immunity norm was enabling senior government officials to avoid accountability for genocide and atrocities committed while in office, in what became known as the anti-impunity movement to change relevant legal instruments or create new laws that would remove the immunity. The movement was successful and the Rome Statute, which established the International Criminal Court (ICC), dropped the immunity norm. Article 27 of the Rome Statute provides that:

This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or

Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute...

Today, this provision is widely known as the international norm of anti-impunity or “anti-impunity norm.” However, attempts by the UN Security Council and the ICC to apply this norm in Africa resulted in severe contestation, with the AU spearheading the challenge prompted by African states (Imoedemhe, 2015; Dembinski 2017; Iommi 2020a).

African regional powers had stressed that the Heads of State immunity still applies in that part of the world despite the anti-impunity norm. In furtherance of this conception and strategic narrative of the world, African regional powers have made an alternate norm, which I describe as the *temporal immunity norm*, to show primacy and dominance of international criminal justice. The Heads of State and Government of the AU adopted the Protocol on the Amendment to the Protocol on the Statute of the African Court of Justice and Human Rights (widely known as “The Malabo Protocol”) in 2014. Article 46 provides that:

No charges shall be commenced or continued before the Court against any serving AU Head of State and Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office (African Union 2014b).

From the norm contestation perspective, the Malabo Protocol and the alternate norm of temporal immunity constitute a fundamental challenge to the Rome Statute and the international norm of anti-impunity. Moreso, in a crucial policy document entitled the ICC “Withdrawal Strategy” that illustrates regional powers’ contestation over the applicability of anti-impunity norm, the AU outlined the rationale and goal of the Malabo Protocol: to “Enhance the regionalization of international criminal law” (African Union 2017, 2). Indeed, other studies (Sirleaf 2017; Ba 2023) have noted that the Malabo Protocol is a crucial mechanism for the regionalization of international criminal justice. Significantly, unlike the

Rome Statute where the UN Security Council enjoys the authority to refer situations that pose threats to peace and security or suspend cases started by the ICC on grounds that such prosecutions may undermine international peace and security, the Malabo Protocol sets up authority in the Assembly of the AU. Consequently, the Peace and Security Council of the AU now demands the UN Security Council's cooperation in implementing the temporal immunity norm:

The UN should support the AU in the latter's efforts to articulate more fully the intersection and prioritising of peace, justice and reconciliation as it obtains on the African Continent, and should view the AU's efforts as a contribution to the global search for principled responses to the challenges of the new conflicts the world faces. The UN should support the AU's efforts to enhance its capacity to prosecute and adjudicate serious crimes. The UNSC should treat with the seriousness they deserve the AU's decisions and requests to defer cases before the ICC in order to ensure that peace efforts are not undermined (African Union 2015b, para 28).

As the new contestation theory on subsidiary norms holds, the salient point is that regional powers created the alternate norm of temporal immunity to prove primacy for decision-making on international criminal justice in regional organizations and institutions – that is, the AU and the Assembly. I hold also that the “AU's decisions” on “cases before the ICC” as shown in the above-quoted text issued by the AU Peace and Security Council represents the implementation of the alternate norm of temporal immunity as opposed to the UN Security Council efforts to apply the international norm of anti-impunity. This contestation between alternate norms and liberal norms in the changing world order signifies the new dimension of norm contestation and innovation for future research.

Norms of Humanitarian Intervention

Intra-state, as well as inter-state conflicts, tend to create conditions for genocide and atrocities like crimes against humanity, and the impetus for external interventions to prevent

the escalation of these crimes. These objectives encapsulate the norm of humanitarian intervention. The central issue was that humanitarian interventions without the consent of the target state would breach the norm of state sovereignty, but the absence of intervention would mean that the state could violate human rights norms without accountability. So, the puzzle was how to reconcile the tension between the two international norms of state sovereignty and human rights or, as Annan (1991) aptly put it, “individual sovereignty.”

By the twilight of the 1990s, global and regional powers initiated diplomatic efforts through the UN and the AU, respectively, to resolve the conflicting norms of state sovereignty and individual sovereignty (for a fuller account of both global and regional multilateral diplomatic endeavors, see Ifediora 2021). Both the regional and global multilateral initiatives succeeded: the regional multilateral initiative was led by the Organization of African Unity (OAU), the predecessor to the AU, and concluded in the year 2000 with the legal provision enshrined in Article 4(h) of the Constitutive Act of the AU, which provides for the “Right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity.” Article 4(h) enacted into law the diplomatic resolution to the conflict between the norms of state sovereignty and individual sovereignty. In Article 4(h), the OAU made the right of intervention, what Ifediora (2021) conceptualized as the “right to protect” concept. For this study, I conceptualize Article 4(h) as the *right to protect* norm.

The global multilateral initiative under the auspices of the UN resulted in the political/diplomatic commitment known as the R2P norm, which the UN General Assembly adopted in 2005 (United Nations 2005, paras 138-40) – five years after the OAU made the alternate norm of the right to protect. Earlier research (for example Williams 2007, 2009; Murithi 2007; Kuwali 2011; Sarkin 2016; Adigbuo 2019) have used the norm contestation concept of localization to understand and contextualize Article 4(h) and R2P, while others

(Aning and Edu-Afful 2016) have employed the concept of agency to explain Africa's support for the R2P norm. The outcome was the subordination of the right to protect to R2P, completely missing the significance of Article 4(h) in the changing world order.

As the new contestation theory on subsidiary norms holds, regional powers made the alternate norm of the *right to protect* to show primacy and dominate the governance of humanitarian interventions based on their conception and strategic narrative of the world. As Kioki's (2003) first-hand account of the rationale for creating Article 4(h) explained, OAU/AU adopted Article 4(h) to obviate the need for consultation with the UN Security Council, the institution that enjoyed international authority under Chapter VII of the UN Charter. This explains why regional powers did not refer to the Security Council while considering whether to activate the right to protect norm in the case of Burundi (for an insider account of the deliberations, see Dersso 2016). Pertinently, the AU now contends that Article 4(h) is the only legal basis for authorizing the use of force for humanitarian intervention in the world:

... the Constitutive Act of the African Union, in its Article 4 (h), authorises intervention in grave circumstances such as genocide, war crimes and crimes against humanity. Consequently, any recourse to force outside the framework of Article 51 of the UN Charter and Article 4 (h) of the AU Constitutive Act, should be prohibited (African Union 2005, 6).

Article 51 of the UN Charter deals with the use of force in self-defense. The quoted text above underlines the new dimension of contestation where regional powers specifically refer to the alternate norm of the right to protect to demonstrate primacy and dominance, not just in Africa but potentially beyond and across different worlds in the changing international political structure. Moreover, as the quoted text showed, the alternate norm of the right to protect norm expresses regional powers' strategic narrative on the use of force in the changing world order and thus constitutes a major challenge to the international norm of R2P and the global West's conception of the world.

Norms of International Organization Authority/Sovereignty

International organizations (IOs), like the UN, the European Union (EU), and the AU, perform state-like functions (Wendt 1994) in various areas such as development, trade, finance, peace, and security, among others. The performance of such functions has been based on the norm of international authority. In the world order as exemplified by the UN system, Chapter VII of the UN Charter predetermined international authority (subsidiarity) and the UN Security Council enjoys primacy.

Scholars (such as Barnett and Finnemore 1999; Cronin and Hurd 2008) have noted that IOs receive authority from sovereign states and there is an ongoing debate about whether IOs possess sovereignty just as territorial states (Wendt 1994; Wæver 1995; Werner and Wilde 2001; Krasner 2016; Ifediora 2023). If so, then IOs should enjoy the norm of state sovereignty, including territorial integrity and independence. The emerging consensus is that IOs have “sovereignty as transferred authority” (Ifediora 2023) – that is informal sovereignty, in the sense that IOs did not claim sovereign status like modern states. However, the claim of sovereignty by the AU has upended this academic consensus, changing the understanding of IO sovereignty as transferred authority to formal sovereignty, almost similar to modern states. The significance is that IOs could enjoy sovereign status without necessarily undermining sovereign states.

As the new contestation theory on subsidiary norms maintains, the formal claim of sovereignty by regional powers on behalf of the AU establishes primacy and dominance over decision-making on global issues in that part of the world. In essence, regional powers have created the alternate norm of international organization sovereignty despite the international authority invested in the UN Security Council under Chapter VII of the UN Charter. The formalization of IO sovereignty by regional powers underpins the alternate norm of IO

authority and the idea that the AU enjoys the decisive power to make decisions on peace and security on the continent. The Assembly of the AU expresses the AU's sovereignty as *the right of decision* on governance of global issues in the region:

the African Union and its Member States... reserve the right to take any further decisions or measures that may be necessary in order to preserve and safeguard ... sovereignty and integrity of the continent (African Union 2014a, paras 8-9; African Union 2015a, para 17c).

Like the norm of state sovereignty, the alternate norm of IO sovereignty signifies respect for organizations and institutions in the world of regions. The alternate norm of IO sovereignty expresses strategic narratives and conceptions of the world by regional powers in the sense of how they govern global issues within their parts of the world.

The foregoing illustrations of alternate norms in the changing world order underpin the parallel norms of global governance that challenge liberal norms and world order. Table 1 summarizes the three parallel norms as well as the subject areas where regional powers have created alternate norms to set up primacy and dominate the governance of global issues in spite of international organizations like the UN.

Table 1. Parallel Norms of Global Governance in the Changing World Order

Subject Areas	Alternate Norms	International Norms
International Criminal Justice	Temporal Immunity	Anti-impunity
Humanitarian Intervention	The Right to Protect	The Responsibility to Protect
International Organization Sovereignty	Formal Sovereignty	Transferred (informal) Sovereignty

These three parallel norms are just a few examples of alternate norms in the changing world order. Subsequent research may find, explore, and conceptualize other norms. One promising

subject area is the protection of refugees and internally displaced persons. Both the Cartagena Declaration on Refugees in Latin America and the Kampala Convention on Refugees and Internally Displaced Persons in Africa provide legally stronger and broader protection for refugees. From the perspective of the new contestation theory on subsidiary norms, these norm-setting legal and policy documents should be studied as instances where regional powers make alternate norms to establish primacy and dominance and challenge international norms and the liberal world order, rather than the consolidation of the latter, as some works (Arboleda 1991; Dieng 2017; Jubilut, Espinoza, and Mezzanotti 2019) seemed to suggest.

Norms Robustness

This section explains why alternate norms are conceptually and structurally robust and fittest for advancing a more legitimate, just, and diverse world order. The central reason is that regional powers, as well as regional organizations and institutions, enjoy substantive legitimacy based on structural factors like the inclusiveness of decision-making mechanisms.

Norm robustness refers to the ability of a norm to survive challenges or contestation (Zimmerman et al 2023), which brings us back to the idea of the Darwinian process of norm selection discussed in the Introduction to this article. There are propositions that contestation can lead to either death or disappearance (Ben-Josef Hirsh and Dixon 2021), or to change or replacement (Sandholtz 2019) if the norm is not strong enough to withstand opposition or rivals. Scholars have linked norm strength to structural factors like legality (Finnemore and Sikkink 1998) and institutionalization (Ben-Josef Hirsch and Dixon 2021), but robustness can also relate to what Deitelhoff and Zimmerman (2019, 3) described as “validity” and “facticity”—the former refers to “the acceptance of the norm’s claims by the addressee and the latter concerns the norm’s ability to influence the “addressee behavior.”

The new contestation theory on subsidiary norms focuses on norm features and stresses that alternate norms are conceptually and characteristically robust because of the structural factor of the “substantive legitimacy” of regional powers. As various contending studies on regional legitimacy (Moravcsik 2002; Schmidt, 2012; Lotze 2013; Rittberger and Schroeder 2016; Schmidt and Wood 2019; Agné and Söderbaum 2022) have noted, substantive legitimacy is based on factors like inclusiveness, consensus voting rules or decision-making, and narrower mandates, particularly in the sense of the scope of authority, among others. These are salient elements of the principles of legitimation. The most important of these elements are inclusiveness and unanimity, as these components conceptualize the core idea that member states of regional organizations enjoy equal participation, which produces what the AU describes as a “sense of ownership” member states have in the Organization’s institutions (see Ifediora 2021b). Such features and understandings of legitimacy elude IOs like the UN because, as scholars (such as Hurd 1999; Keohane 2011) have shown, its institutions, especially the Security Council, are characteristically exclusive. For instance, the mechanism of decision-making in the Security Council allows the five powerful permanent members out of 15 to veto resolutions that undermine their interests, thereby precluding equal participation and a sense of belonging. Such factors drain the legitimacy of some IOs and make international norms tenuous.

Alternate norms are structurally and conceptually robust because they tend to be clearer, thereby reducing contestation. Unlike international norms, alternate norms are less contested, and their meanings are finer because the processes of norm-making in regional worlds are more inclusive and transparent, often leading to the enactment of alternate norms in legal instruments with the complete support of regional powers. For instance, first-hand accounts (Kioki 2003; Tieku 2004) of the making of the alternate norm of the right to protect show the inclusive process in which member states of the OAU/AU clarified and reconciled competing

conceptions on humanitarian intervention canvassed by regional powers (Nigeria, South Africa, and Libya) as well as non-state actors (civil society groups). Today, there are no outstanding normative or conceptual questions about the right to protect norm, although there are remaining operational matters such as the AU's capacity (Cilliers and Sturman 2002) and the moment of activation (Dersso 2016). This illustrates norm robustness. In contrast, the normative status of R2P is contested (Badescu and Weiss 2010; Zähringer 2013; Welsh 2019) but this dispute existed right from the start because of a lack of widespread support by regional powers (Annan 2005). Now, Deitelhoff and Zimmermann (2020, 64) note that R2P is already "weakening," and its robustness may still "vary significantly over time." In other words, R2P may not survive the social selection process of norm contestation, especially in those parts of the world's regions (global South and global East) where R2P has had the greatest opposition.

The alternate norm of temporal immunity also illustrates robustness because it is clearer. It simply provides that Heads of State and Government and other senior officials enjoy immunity whilst in office. In essence, the temporal immunity norm shows a time-based order of criminal justice so that the immunity expires once the official leaves office. The alternate norm of temporal immunity does not immune government officials from criminal liability incurred when in office. The Malabo Protocol that set up the temporal immunity norm was adopted by consensus of the Assembly of the AU, which includes all 55 Heads of State and Government of the Organization. All this makes the alternate norm of temporal immunity robust. Contrast this with the international norm of anti-impunity, which provides in Article 16 of the ICC Statute for temporal immunity that only the UN Security Council can authorize for 12 months with the option of renewal when the Council decides that pursuing criminal proceedings may jeopardize international peace and security. Article 16's provision of temporal immunity is an inherent contradiction of the anti-impunity stance of the liberal world order, injecting a considerable lack of clarity in the normative architecture. Even so, the anti-

impunity norm is still earnestly contested by global/regional powers for several reasons, ranging from the withholding of signatures to the ICC Statute by several major member states of the UN, to a lack of diversity in the making of the norm (Iommi 2020b). This illustrates the instability and fragility of the anti-impunity norm – a constant feature of liberal norms that spurred constructivist research and innovation through the contestation theory.

Lastly, the alternate norm of IO sovereignty shows norm robustness as it established clarity to the puzzle of IO “sovereignty as transferred authority” (Ifediora 2023) – a framing that conceptualizes the normative basis for understanding the exercise of authority by IOs in international relations. The central puzzle was whether IO can have sovereignty like modern states and, if so, then what dynamics of change or conditions would likely lead to that momentous outcome. It was an academic conundrum that centered on the practical exercise of state-like authority by IOs, especially the EU (for an accessible review of the literature, see Ifediora 2023). Here, scholars considered normative clarity and robustness in international norm architecture, in the sense of potential sovereignty claims by IOs or state members on behalf of IOs. The African regional powers asserted the sovereignty of the continent and declared that the AU reserves the right to defend continental sovereignty. This sovereignty claim underscores the formalization of international organization sovereignty and underpins normative clarity, pointing to the robustness of alternate norms based on substantive regional legitimacy.

Conclusion

This study diverged from previous norm contestation theory on subsidiary norms that explained norm-making in the global South as a means to protecting independence or promoting preferred international norms, which culminated in the consolidation of liberal norms and conceptions of world order and created a large blindspot where norms emerging

from the world's regions that challenge international norms were unexplored in constructivist research on norms dynamics and (d)evolution. Instead, this study developed the new contestation theory on subsidiary norms in the changing world order and held that regional powers make alternate norms to establish primacy in regional organizations and institutions and dominate the governance of global issues in their part of the world. Thus, alternate norms parallel international norms, and rather than consolidate the liberal international order, they stand for a fundamental challenge to the liberal world order. Alternate norms encapsulate regional powers' strategic narratives and conceptions of the world and therefore capture the changing world order in which regions have become pivotal in the evolving international system.

Above all, this study stimulates a healthier consciousness of alternate norms that originate from the world's regions and challenge international norms, and in doing so, steers in a fresh innovation in contestation theory in constructivist research on norms dynamics IR. The significance of alternate norms becomes clearer as transformative because "the Rest" including the global South will continue to "surge in power" while "the [global] West recedes" (Deudney, Ikenberry, and Postel-Vinay 2023, 1) with the imperative of liberal international norms that have undergirded global governance in the past decades in tandem. Indeed, scholars (such as Ruggie 1989; Deudney, Ikenberry, and Postel-Vinay 2023) have observed that what we consider as international norms today have only had regional importance reflect the West's decline more aptly. In this context, the term "regions" takes the form of "globes" in John Ruggie's conception of global transformation and non-territorialized spaces. The salient point is that with the world progressively divided into different orders – the global West, the global East, and the global South (see Ikenberry 2024) – future studies may well understand international norms as mere Western norms with little or no relevance in the global East and South, and any other global formations that may appear in the horizon. It is in this divided

world, in the absence of truly overarching universal norms, that alternate norms become the centerpiece of future norm studies in IR, even setting the scene for further innovations in contestation scholarship.

Additional promising areas for future studies on alternate norms include i) the protection of refugees and internally displaced persons – the AU is leading the expansion of rights and norms on these crucial global governance issues; ii) the regulation of artificial intelligence and technology in general – the EU is leading the development of norms in this area; iii) climate governance, especially in the context of ongoing contestation over acceptable normative standards as observed in various failed conference of parties meetings. The Paris Agreement, the closest to a universal norm-setting standard, is now mostly redundant; iv) cyberspace governance, which has seen more regional initiatives from the EU and ASEAN. This list is not exhaustive, and the next research should explore other areas.

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