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Introduction

1.1 THE VOGONS OF GLOBAL GOVERNANCE

“But the plans were on display . . .”

“On display? I eventually had to go down to the cellar to find them.”

“That’s the display department.”

“With a torch.”

“Ah, well the lights had probably gone.”

“So had the stairs.”

“But look, you found the notice, didn’t you?”

“Yes,” said Arthur, “yes I did. It was on display in the bottom of a locked filing cabinet stuck in a disused lavatory with a sign on the door saying Beware of the Leopard.”¹

Only shortly after Arthur Dent’s encounter with the council demolition crew that wants to tear down his house to make room for a bypass, a fleet of Vogon spaceships arrives in Earth’s orbit, making the following announcement:

As you will no doubt be aware, the plans for development of the outlying regions of the Galaxy require the building of a hyperspatial express route through your star system. And regrettably, your planet is one of those scheduled for demolition. The process will take slightly less than two of your Earth minutes. . . . There’s no point in acting surprised about it. All the planning charts and demolition orders have been on display at your local planning department in Alpha Centauri for 50 of your Earth years, so you’ve had plenty of time to lodge any formal complaint and it’s far too late to start making a fuss about it now.²

¹ D. Adams, *The Hitchhiker’s Guide to the Galaxy* (Oxford: Pan Books, 1979), p. 12.

² *Ibid.*, p. 32.

Earth is (I hope) currently not in danger of being destroyed to make room for a hyperspatial express route. Still, Arthur Dent's encounter with the Vogons does not just show parallels to his frustrating dealings with municipal authorities. Increasingly, our own everyday life is considerably affected by forces which are less visible to us than our local planning offices. We buy and consume products that have been engineered according to standards developed by private institutions. We board planes whose safety protocols operate alongside rules set by global industry associations. We rely on certificates asserting the sustainable and fair production of coffee, collegiate merchandise, seafood, or timber. We watch elite sports competitions trusting that the athletes have been tested for performance-enhancing drugs by independent experts. We deposit and transfer our money under the watchful eyes of financial intelligence officials bound by informal transnational agreements to report specific transactions. The list goes on.

Yet were we ever to question how these standards, protocols, certificates, tests, or agreements are made, by whom and according to which rules – how, so to speak, the sausage gets made – the answers would be surprisingly hard to find. And in case we disagreed with any of them, recourse to an authority that we could ask to review and reverse these decisions would by no means be a matter of course.

In most jurisdictions, values such as accountability and transparency are at the core of the field of administrative law. They already become much harder to anchor in the existing corpus of international legal norms. When we are moving beyond the frontiers of interstate law and into the murky depths of global governance, standards of transparency and accountability may well appear to be in free fall. This initial perception of rulelessness in traditional intergovernmental organizations and global governance alike is, however, not the whole story. In both of these areas – and the boundaries between them are quite fluent anyways – we do find rules that govern procedure, responsibility, and participation, and that offer a certain degree of legal protection to the governed.

Of course, even where formal rules exist, a lot goes on behind the scenes of institutions, without grand speeches or formal votes, much less procedural rules. But even so, these rules have somehow come into being, and they are much more than just window dressing. At the very least, they are indicative of the fact that the insides of international institutions, opaque as they may be, are subject to a certain level of order, and that this order is likely grounded both in what is considered fair and in considerations about streamlining procedure. A section of the rules of procedure of an institution detailing which decisions require a vote, for example, is usually the result of weighing up two types of considerations: in which way does a formal vote on this matter serve interests in participation and transparency, and how much does it affect

the expediency of proceedings? Between these two factors, an area of tension is created, and it is by no means an easy exercise to try and predict which one carries the greater weight.

Studying these rules as such is already a worthwhile research enterprise. Going one step further and trying to figure out the patterns and motivations behind establishing them is bound to enrich our understanding of the global governance machinery's inner workings, which in turn may help keep the global governance Vogons in check.

In the reality of the modern global governance landscape, states' interests are no longer the only ones making waves. In the face of literally thousands of relevant actors – from government agencies to corporations, nongovernmental organizations (NGOs) to private transnational regulators – discerning voices and interests becomes a daunting, if not impossible, task. However, even in this difficult arena, research straddling the divide between law and political science has set out to find an appropriate framing for the proliferation of rules governing intrainstitutional procedure.

While the big picture of global governance has been painted more than once in the last thirty years or so, there is something to be said for going more granular. Disaggregation, intricacy, and variety, after all, make up the very essence of global governance. The global administrative law (GAL) literature, for example, provides a descriptive analysis of the ongoing juridification in global governance. It compares the internal rules instilling a degree of accountability and transparency into some of the institutions active in this space to familiar concepts from domestic administrative law, much in the sense of the municipal administration – Vogon parallel Arthur Dent encounters.

How deep the parallel really runs in regard to global governance is discussed at length in the GAL literature and elsewhere. A pressing question that has so far received less attention arises from our lack of knowledge about the how and why of these procedures' emergence. The literature on GAL itself offers no concrete account of this genesis and probably was never meant to. However, if we truly wish to understand the process of juridification in global governance, we cannot shy away from looking at its roots.

As case in point, we need not look further than the international organization at the center of our collective attention during the year 2020. Why has the World Health Organization (WHO), which is equipped with a significant budget, near-universal membership, relatively robust competences, expert personnel, and decades of experiences, not risen to expectations with its handling of the COVID-19 pandemic? Why, specifically, has it risked many governments' (and people's) trust with an initial deference to China's

position? Without giving too much away, some of the answers to this can be found by subjecting the procedural rules of the International Health Regulations³ (IHR) to an analysis that accounts for state interest in procedural design.

Such an analysis primarily needs a concept that is able to theorize the design of procedural rules in global governance as a product of state interest. Secondly, it benefits from an empirical frame of reference, which can only be created by undertaking a standardized inquiry into a significant number of institutions and their procedure.

1.2 CONCEPT AND STRUCTURE OF THE PROJECT

To this end, I create a theoretic matrix as the basis for empirical research. Leaning on the descriptive power of the GAL literature to delineate the scope of my analysis, I develop a factual concept of procedural justice in global governance. I focus on procedural justice in the sense of a conviction on behalf of those participating in a decision-making procedure that the procedure itself will lead to what they consider a fair result, which will therefore be accepted. In global governance, I propose, the decision-making procedure is designed by states according to what they believe will produce this conviction among themselves and, as the case may be, other relevant entities. The main hypothesis is that higher state interest in procedural justice stands in connection to what I call increased procedural density.

By disaggregating both state interest and procedural density into several factors, I can measure this connection, test the hypothesis, and draw a more complete picture of the genesis and role of procedure in global governance.

After first elaborating the theoretic framework, main hypothesis, and several subhypotheses, in the second part I continue with my empirical analysis. Taking as my starting point the findings from coding global governance activities carried out by forty institutions, I sketch the interrelations between specific functions of state interest and procedural density with the help of in-depth case studies. I look at what is at stake with each global governance activity: is it legally binding? Does it take place in a particularly delicate subject area of politics? And if so, is the activity subject to particularly “dense” procedure?

In the data and the case studies, I observe in practically all instances studied a process of differentiation and specialization, of fitting procedure to the

³ International Health Regulations (2005), Geneva, in force June 15, 2007, 79 UNTS 2509.

demands and problems of specific tasks. This conscious designing of procedure into institutions is grounded both in ideas about efficiency and, on a deeper level, in the distinctive and often egoistic interests of the designers, notably states, in what they consider to be procedural justice. These two sets of motivations are often inextricably entangled. States desire protection of their interests and preservation of their sovereignty, but they also want institutions to function smoothly and resource-efficiently. Often, specific procedures create ways to enable institutions to walk the fine line between these two often conflicting goals. When the scale has to tip in favor of one or the other, procedure can remedy some of the discomfort that states and other participants may feel in the situation.

This all goes to show that procedure in global governance does not just *happen*; it is *made*: made to serve a purpose. A deeper understanding of the mechanisms shaping procedure, specifically one conscious of the possibility that states as designers may not always carry strong normative interests in mind, can help us better understand predicaments such as the WHO and others. Insights developed here as well as the matrix created and the collected data can and hopefully will be of use in other contexts of research and practice.