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1 Human Rights Protection in International Organizations: An Introduction

Michael Zürn and Monika Heupel

How do international organizations (IOs) react to complaints about the violation of human rights when they exercise authority over individuals? We can show empirically that, in recent years, IOs have progressively introduced provisions for the protection of human rights. They have committed themselves to fundamental legal principles associated with the rule of law. What is more, some of them have introduced specific policies to prevent human rights violations and even complaints procedures enabling affected individuals to call them to account for violating their rights. These measures can be interpreted as a response to the increased capacity of IOs to exercise authority and to delimit the freedom of states and individuals. To the extent that these capacities are used in a way that violates fundamental rights, IOs face disapproval. They need to respond to their critics for reasons of legitimation. In spite, therefore, of an overall detrimental political constellation after 9/11 and the rise of powers which re-emphasize national sovereignty, this combination of factors has had the effect of a further legalization of global governance.

In this introduction, we identify the development of institutional provisions by IOs for the protection of human rights as a new theme for most explanatory accounts of international institutions. We start in Section 1 with a presentation of our argument in a nutshell. We argue in Section 2 that the normative functionalism inscribed into most International Law (IL) debates does not account for the struggles over this institutional development and the significant variation in the quality of the institutional changes among IOs. We also argue that the expectations regarding the introduction of human rights protection provisions in IOs that can be derived from International Relations (IR) theories are not sufficient to explain their rise. Against this background, we build on existing approaches and develop the *authority–legitimation mechanism* (ALM) in detail in Section 3, and show, in Section 4, that the empirical test of our analysis has proven the explanatory value of the mechanism. In Section 5 we specify the ways in which our use of the concept of causal mechanisms

differs from others and identify the more concrete pathways through which the ALM unfolds. In Section 6 we move on to the comparative mode of our design and discuss the conditions under which the causal pathways are triggered and can be effective. Finally, in Section 7 we briefly look ahead to the other chapters in this book.

1 The Argument in a Nutshell

‘Sex charges haunt UN forces. In places like Congo and Kosovo, peacekeepers have been accused of abusing the people they’re protecting.’ This is the title of an article published in the *Christian Science Monitor* (Jordan 2004). The article describes the state of affairs vividly:

The Masazh (Massage) Night Dancing Bar is said to be one of the 200 clubs in Kosovo notorious for prostitution and illegally trafficked foreign women. It was also alleged to be among the favorite spots for United Nations staff and Kosovo Protection Force (KFOR) peacekeepers looking for cheap thrills in recent years . . . But the problem goes beyond Kosovo and sex trafficking. Wherever the UN has established operations in recent years, various violations of women seem to follow:

- A prostitution ring in Bosnia involved peacekeepers, while Canadian troops there were accused of beatings, rape, and sexually abusing a handicapped girl.
- Local UN staff in West Africa reportedly withheld aid, such as bags of flour, from refugees in exchange for sexual favors.
- Jordanian peacekeepers in East Timor were accused of rape.
- Italian troops in Somalia and Bulgarian troops in Cambodia were accused of sexual abuses.
- . . . Moroccan and Uruguayan peacekeepers in Congo were accused of luring teenage girls into their camp with offers of food for sex. The girls then fed the banana and cake remuneration to their infants, whom media reported had been born as a result of multiple rapes by militiamen.

Despite such reports, Kofi Annan, then Secretary-General of the United Nations (UN), defended the vast majority of UN personnel as decent and well-meaning. Indeed, those accused represented just a fraction of the 62,000-plus military personnel and civilian police serving in 2004 in 16 UN peacekeeping missions around the globe. Yet, the problem goes deeper than just misconduct on the part of a minority of UN personnel. It is not only UN *personnel* that violate human rights during peacekeeping activities, a number of UN *policies* arguably have done so as well (Verdirame 2011). In fact, comprehensive trade sanctions that hurt innocent people in targeted countries and the blacklisting of individuals without due process have violated human rights too. In addition, other IOs besides the UN have likewise been accused of violating human rights. North Atlantic Treaty Organization (NATO) personnel have been

charged with sexual exploitation and the illegal detention of prisoners. The European Union (EU)'s blacklisting practices have also been criticized. Furthermore, international financial institutions have received negative attention for infringing subsistence rights and aggravating poverty, for example in an article in *The Guardian* on the World Bank (Brittain and Watkins 1994):

In Kenya, a succession of bank-financed livestock schemes have displaced Masai pastoralists, driving thousands into destitution. World Bank forestry projects in Guinea, Ghana and Ivory Coast have accelerated the deforestation of West Africa – with grave implications for agriculture, touching the key problem of escalating food shortages – and destroyed the livelihood of forest dwellers while benefiting only middle-class entrepreneurs . . . In Zimbabwe, for instance, per capita spending on health has fallen by a third since 1990 and ‘user fees’ have been imposed on health care provision. The objective, as in other countries, has been to reduce the budget deficit through a regressive system of taxation. The result: a sharp downturn in women’s attendance at ante-natal care centres, and an increase in infant and maternal mortality rates among the poorest people.

To put it in the words of an established international lawyer, ‘[i]t is evident that international organisations have for many years acted in ways that impact very negatively on human rights in a range of their activities, from peace-keeping and refugee action, to economic assistance’ (McCorquodale 2009: 142). In fact, today IOs not only formulate normative standards based on individual rights and the rule of law, but are also capable of violating these standards themselves. This is the result of a long and quite remarkable development in IL that can be sketched in four steps.¹ Originally, IOs were seen as mere instruments of states, without legal personality and interacting only with governments. They were founded by states from the second half of the nineteenth century onwards in order to serve them and help them avoid conflicts with each other. The second step was taken after World War II: it was only in 1949 that the International Court of Justice (ICJ) acknowledged the UN as a legal entity in a report about the reparation for injuries suffered in the UN’s service.² International organizations thus became a subject of IL. With the shift from coordination to cooperation law, a third conceptual step was taken: IOs were now increasingly seen as serving the common good of the international community. For many, the Law of the Sea Conference, with the establishment of the common heritage of mankind, was crucial for this step. As part of this move, analysts also attributed political agency to IOs (Barnett and Finnemore 2004). A final step was

¹ These four steps roughly follow the four conceptions of international courts distinguished by Armin von Bogdandy and Ingo Venzke (2014).

² See Inis L. Claude’s ‘Swords into Plowshares’ (1964), a *locus classicus* of this view of IOs.

taken when IOs assumed a role in the protection of individual rights and increasingly interacted with, and provided access for, non-state actors, especially civil society organizations (CSOs) (Tallberg et al. 2013). Now IOs also have a society.

As a result of these developments, IOs exercise authority over a society that consists of both states and non-state actors, including individuals. Some international norms and rules compel national governments to take measures even when they have not agreed to do so, and these measures often affect individuals indirectly. General economic sanctions, for instance, not only affect the government of a country, but, at the same time, affect many individuals and the society as a whole. In some cases, decisions made by international institutions even target individuals directly, such as those taken by the UN Security Council (SC) Al-Qaida and Taliban Sanctions Committee, or by transitional administrations. Both types of activities – those that bind states, thus affecting private actors only indirectly, and those that affect individuals directly – are indications that international institutions have public authority.

If IOs now increasingly exercise public authority, take decisions and implement them independently or at least lay down strict conditions for their implementation, violations of human rights that then occur are no longer attributable to states alone, but also to the IOs themselves. The story of the development of IOs, nevertheless does not end with their reaching the status of public authorities and acquiring the capacity to violate human rights. Public authority of this sort requires legitimacy. Those who exercise public authority, and thus reduce the autonomy of others, need to legitimate themselves. Public authorities often justify the decrease in individual autonomy with an increase in common goods – and so do IOs. While it is always contested which norms should be pursued by public authorities and how the common good is served, it is quite evident that compliance with the standards that are promoted by a public authority are a minimal requirement for attaining legitimacy. Double standards undermine legitimacy.

It follows that, especially for those that purport to promote the protection of human rights, any violation of human rights by IOs undermines their credibility and thus their very authority. Moreover, rule of law is based on the idea that the authors of the law are bound by the law as well (Tamanaha 2004). The violation of human rights by IOs, therefore, also undermines any activities they undertake to promote the rule of law. When IOs request rule of law standards within nation states, they are expected to be in compliance with these standards as well.

International organizations have responded to this predicament. The last ten years have seen a debate that has pointed up the applicability

of rule of law prescriptions to IOs. This is nicely illustrated by comparing a statement made by the president of the UNSC in 2006 with one made in 2010. In a meeting of the UNSC held in 2006, the president stated that the 'Security Council attaches vital importance to promoting peace and the rule of law, including respect for human rights, as an indisputable element of lasting peace'.³ Four years later, the respective opening of the paragraph reads as follows: 'The Security Council expresses its commitment to ensure that all UN efforts to restore peace and security themselves respect and promote the rule of law.' This indicates a remarkable shift from promoting human rights and the rule of law to promoting and *respecting* the rule of law and human rights. Subsequently, in 2012, the 'Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels' recognized that 'the rule of law applies to all states equally, and to international organizations, including the United Nations and its principal organs'.⁴ To use the words of a recognized international lawyer, '[t]oday, there is arguably no international body that questions the relevance of human rights norms to its activities' (von Bogdandy 2013: 298, our translation).

More concretely, IOs have attached provisions for the protection of individual rights to specific policies. They have established prevention provisions to ensure that they do not violate human rights in the first place, and they have provided avenues for complaint for those affected when violations do, nevertheless, occur. These provisions are not always consistently implemented, but their very introduction is already a noteworthy development. For instance, a number of provisions have been developed by the UN in an effort to guarantee that human rights are protected within the framework of peacekeeping missions. Between 2003 and 2009, the UN established procedures to prevent peacekeepers and other actors involved in UN missions from sexually exploiting women and children. To begin with, the UN has forbidden every form of sexual exploitation in the context of peacekeeping in explicit codes of conduct (UN Secretary-General 2003). In addition, compulsory training modules were created for peacekeepers to enhance their awareness of the new regulatory regime. Finally, bodies to receive complaints from victims were established both in the UN Secretariat and in individual missions. The UN has also given itself rules regarding behaviour towards prisoners in peacekeeping operations. In the late 1990s, the UN Secretary-General published a bulletin stating that prisoners were to be treated in accordance

³ See UN Doc. S/PRST/2006/28.

⁴ UN Doc. A/67/L.1 (19 September 2012), adopted as UN Doc.A/RES/67/1 (24 September 2012).

with the Geneva Conventions and customary IL (UN Secretary-General 1999). In parallel, an ombudsperson and later the Human Rights Advisory Panel were established in the mission in Kosovo.

United Nations' peacekeeping is not an isolated case. In addition, the African Union (AU), the EU, the Food and Agriculture Organization of the UN (FAO), the International Criminal Court (ICC), the United Nations Development Programme (UNDP), the UN Refugee Agency (UNHCR), the UN Educational, Scientific and Cultural Organization (UNESCO) and the World Bank have all attached broad provisions for the protection of human rights, including both prevention and complaints mechanisms, to their policies. Furthermore, the Council of Europe, the International Labour Organization (ILO), the International Monetary Fund (IMF), NATO, the Organisation for Economic Co-operation and Development (OECD), the Organization for Security and Co-operation in Europe (OSCE), the Southern African Development Community (SADC) and the World Health Organisation (WHO) have now established at least either prevention measures or complaints procedures in an effort to avoid human rights violations. Of the 20 IOs with the highest name recognition,⁵ only five have failed to launch any provisions for the protection of human rights: the Association of Southeast Asian Nations (ASEAN), the International Atomic Energy Agency (IAEA), the North American Free Trade Agreement (NAFTA), the Shanghai Cooperation Organization (SCO) and the World Trade Organization (WTO). It may well be that the smaller IOs outside the top 20 will, in future, be at least as active in establishing these institutional devices. As a representative of a small IO put it in an informal conversation, there are some things a small IO needs to have by now, in the area of human rights protection, before it is accepted as a member of the family. It seems, therefore, justified to talk about a trend towards an institutionalized standard of human rights protection that 'applies to all States equally, and to international organizations, including the United Nations and its principal organs', to use the words of Ban Ki-moon.⁶

These provisions for the protection of human rights vary greatly, however, from one IO to the next. While some have established quite comprehensive provisions, others have carried out reforms that are not much more than window dressing. This variance is due largely to differences in political opportunities to initiate change, such as the vulnerability of an IO, the presence of actors demanding change, and the resources and coalition

⁵ Name recognition is measured as Google Scholar counts (retrieved 9 May 2012). While this is admittedly a rough measure, it indicates the relative relevance of IOs in public debates.

⁶ UN Doc. A/67/L.1 § 2 (19 September 2012), adopted as UN Doc. A/RES/67/1 (24 September 2012).

partners that these actors have at their disposal – to highly contingent factors, in other words. In order to account for this variation, we aim to identify the more detailed causal pathways through which the further legalization of international authority became possible. We identify four, each of which is closely associated with specific actors, external to the central decision-makers in the IO, who act as drivers of the process. The pathways are: legislative institution-building, judicial institution-building, like-minded institution-building and anticipatory institution-building. Moreover, we generate hypotheses about the conditions under which these pathways are chosen and have proven to be effective. In doing so, we combine the logic of process tracing with the logic of comparative research in a unique way. First, we develop and test a causal mechanism – the ALM – via process tracing, not just in one case, but by analysing ten cases. Second, we use the ten cases to unwrap the ALM by taking the notion of equifinality seriously and to identify different pathways via which the causal mechanism can work. Third, we move to a comparative logic in order to generate hypotheses about the conditions and effects of different causal pathways.

2 The Applicability of Human Rights Standards to IOs – the IL and IR Perspectives

These developments are reflected in analyses in IL. In an analysis of legal issues relating to human rights violations by the UN, Guglielmo Verdirame (2011) offers a comprehensive answer to the doctrinal questions involved. These include: Is the UN bound by international human rights law? What legal consequences follow from the breach by the UN of a rule of international human rights law? How can its obligations be enforced and compliance with them improved? What we lack, however, is an explanatory account of the real developments that took place.

A number of theoretical debates in IL have taken up the challenge indirectly. The concept of *global administrative law* (GAL) is based on the insight that much of what IOs do can be characterized as administrative action, and that such action is itself being increasingly regulated by administrative-law-type principles – in particular those relating to participation and transparency, as well as to accountability and review (see Kingsbury et al. 2005). The preventive measures and complaints procedures to protect human rights are seen as part of an emerging GAL, a sort of internal constitutionalization of IOs (von Bernstorff 2008: 1960; see also Klabbers 2004). Similarly, the notion of the *international rule of law* is based on the idea that there is a transfer of governance principles from the national to the international level (see, e.g., Bodansky 1999). Along the same line, Harold Koh (2006) has stressed the importance of interaction,

interpretation and internalization, and has argued in favour of a theory of *transnational legal process* in which principles that have governed domestic affairs move into the transnational sphere. Those who speak about the *constitutionalization* of IL explicitly point to human rights, the rule of law and democracy as the normative anchors for the handling of legal conflicts between the national and international levels (Dunoff and Trachtman 2009; Kumm 2009). Ruti Teitel (2011: 216) even observes the rise of *humanity's law*, consisting of the law of war, the international human rights law and international criminal justice, in order to explain the shifting emphasis of IL from serving the interests of states to protecting individuals from political authorities (see also Slaughter 2013).

All these interpretations are important contributions to legal theory. The picture they draw has no ambition to reproduce the real world in a detailed and encompassing way. Rather, they reconstruct real-world developments in normative and legal terms in order to provide guidance for legal practice. From this perspective, the importance of individual rights has grown enormously as far as IOs are concerned, for two reasons. On the one hand, the role of individual rights in legal practice and theory has been heightened significantly in recent decades. On the other, IOs increasingly implement policies that affect individuals – which puts them in a position to violate human rights. It is hardly surprising, therefore, that IOs have developed provisions for the protection of those rights.

Of course, these authors are not naïve. They are very much aware of the contestations and resistance that any shift in the interpretation of IL may provoke. Teitel (2011: 11), for instance, points out that '[t]he relationship between this new, altered legal order and the subsisting traditional order of interstate relations, embodied by sources such as the UN Charter's rules on use of force, remains tense and unresolved'. Nonetheless, legal theories tend to see the development whereby IOs have progressively introduced provisions for the protection of human rights as part and parcel of a broader process. In this view, IOs, in general, commit themselves to fundamental legal principles such as the protection of human rights and the rule of law and also introduce accountability procedures enabling affected individuals to call them to account for violating their rights. These institutional developments are seen as necessary because the general recognition of human rights has rendered state sovereignty conditional and the desirable empowerment of IOs has created increased duties of accountability. So far, so good. Yet, to *explain* specific institutional choices as part of a broader movement towards humanity's law and the international rule of law seems to assume a special kind of functional logic: things happen because they are normatively desirable. In this sense, these accounts implicitly follow, to some extent, a logic that may be labelled 'normative functionalism'.

A theory of normative functionalism does not suffice as an explanatory account from the perspective of IR theory. There are too many phenomena to be explained, such as two world wars, ethnic cleansing and despotic leaders terrorizing their own populations, all of them squarely contradicting the notion of history as normatively progressive. Even if, in a specific case, the normative need for institutional reforms were to translate directly into the provision of such reforms, we would be mainly interested in the specific circumstances that made this (exceptional) development possible. Even if one utilizes legal theories as a building block in order to explain the observed institutional changes – which, of course, is not their original purpose – an explanatory approach also needs to take into account variance within the trend: Why have some IOs established quite extensive provisions to protect individual rights, while these reforms did not happen in other IOs? Why are some reforms not much more than window dressing? The quality of the protection provided for human rights varies greatly from one IO to the next. This shows that the causal link between the normative necessity to legitimate political authority and the establishment of provisions to protect human rights may exist at the general level, yet the specific outcome may depend largely on differences in the availability of resources and political opportunities, and hence on normatively highly contingent factors. In this book, we want to explain both how the general mechanism generating more IO accountability towards individuals works and how we can account for the variance among IOs. The objective is to explain this development, not to give a legal interpretation of it. In the final chapter, we will, however, briefly return to the question of to what extent the IO devices to protect human rights that we have analysed can be seen as a development towards the international rule of law and constitutionalization.

The timing of the depicted developments at first sight runs counter to some theoretical expectations in IR. Most of the institutional devices to protect human rights in the practice of IOs were introduced in the last 15 years. Theories that focus on major powers and their interests⁷ would expect a weakening of international institutions after 2001 rather than the further legalization of their practice. All the major powers seemed to have had priorities other than the internationalization of the rule of law over the last 15 years. After 9/11, the Bush administration effectively changed the orientation of United States (US) foreign policy. In the 1990s, the Clinton administration aimed at a strengthening of IOs inasmuch as they

⁷ This group includes analyses which see international order and international institutions as a function of major powers and their distributional interests (see Gilpin 1987; Keohane 1980; Krasner 1991) or as an expression of the social purpose of major powers (see, e.g., Hurrell 2007; Reus-Smit 1999; Ruggie 1986).

were considered useful for fostering the agenda of democratization and the diffusion of the rule of law. So, while the US was very careful to maintain a special status with special rights, it pushed the agenda of legalization of international affairs. This changed quite dramatically in the next decade. The United States sidelined IOs in favour of coalitions of the willing and put national security first. While the Obama administration made some cosmetic correction to this course, it did not change it fundamentally.⁸ At the same time, the enthusiasm about the fall of the Berlin wall, a democratization of Europe as a whole and the historical victory of freedom and democracy faded. Right-wing populism in Western Europe and ethnic fights in Eastern Europe led the European powers and people to retreat from the unconditional support for multilateral institutions. Even the EU gets more and more politicized (de Wilde and Zürn 2012). While some of the European states remain, at least rhetorically, defenders of multilateralism, their willingness to lead this process and commit resources to it has decreased. The Doha round trade negotiations have shown this clearly.

Most importantly, the idea of a power transition in favour of rising powers contradicts further legalization of the international order. Jim O'Neill coined the term 'BRIC' (for Brazil, Russia, India and China) in an article published in 2001 (O'Neill 2001). Subsequently, some of the big countries of the former Southern World and the former Communist World joined a loose alliance to challenge Western domination in international institutions. The major theme that seems to provide cohesion in this diverse group is a re-emphasis on sovereignty and the norm of non-intervention (Zürn and Stephen 2010). In most instances, these states see themselves as defenders of a state-dominated world order against an individual-rights-based world-view with its international institutions, which, in their view, are just a new form of Western domination and imperialism. This programme is squarely directed against humanity's law and global constitutionalism. Even if liberal international institutions were able to integrate the rising powers (Ikenberry 2011), they still could not possibly be expected to deepen legalization. Against this background, the rise in provisions for the protection of human rights appears somewhat surprising.

Four IR theories nevertheless provide building blocks for an explanation of the rise in provisions for the protection of human rights among IOs in the last 20 years. According to *rational institutionalism*, legalization and other forms of institutional change in IOs are to be traced back primarily to the interests of IO member states. On a general level, states are

⁸ See Simmons (2009: ch. 2) for a concise account of the international human rights regime after World War II.

expected to strive towards the legalization of IOs if it is in their interest to do so – that is, if the benefits of legalization outweigh its costs. More specifically, states are expected to support legalization if the reforms required reduce transaction costs and enable them to make credible commitments (Abbott and Snidal 2000). The legalization of IOs is also expected to help states tackle the challenges associated with incomplete contracting. The creation of court-like bodies in IOs, for instance, serves as a protection for states if uncertainty is high (Koremenos 2013: 667–669; Koremenos and Betz 2013).

Rational institutionalists, therefore, should be rather pessimistic when it comes to the propensity of states to campaign for provisions in IOs that bind the organizations to the protection of human rights. Motivations such as making commitments credible, reducing transaction costs and dealing with the consequences of incomplete contracting may be relevant when it comes to state–state interactions in IOs, but are less relevant when it comes to the interactions of IOs with individuals. Nevertheless, concepts such as the reduction of uncertainty, signalling and self-commitment are useful building blocks for the explanation of human rights provisions in IOs.

Domestic sources theories of international legalization also contain helpful concepts that can be used to deduce assumptions regarding the conditions on which states further the legalization of IOs. Domestic sources, or liberal theories of international legalization, hold that a state's foreign policy reflects the interests and ideational convictions of individuals and collective actors, as well as their relative power, at the domestic level (Moravcsik 2013). In many instances – for instance, for the ratification of treaties or the funding of IOs – governments depend on the support of their parliaments. Following the logic of two-level games, parliaments have, therefore, potentially great influence when it comes to attaching conditions – such as further legalization – to their assent to proposals made by the government (Putnam 1988). National courts can also shape governments' foreign policy decisions as regards legalization. Although many national courts are still reluctant to challenge the foreign policy decisions of national governments, some courts have in recent years become ever bolder in challenging such decisions (Benvenisti and Downs 2009) and have pushed governments to advocate the legalization of IOs. Finally, liberal theories of international legalization maintain that domestic civil society can influence the foreign policy agenda of governments and, for instance, lobby for international legalization.⁹

⁹ See, for instance, Jonathan A. Fox and L. David Brown (1998) for this dynamic in World Bank reform.

Domestic sources theories of international legalization have explanatory value when it comes to a specific form of international legalization, namely states' commitment to and compliance with international human rights treaties. Liberals have shown that domestic factors can explain why states commit themselves to international human rights conventions (Moravcsik 2000) and why states comply, or fail to comply, with the duties that the human rights conventions they have signed impose on them (Dai 2014; Simmons 2009). Thus far, liberal theories of legalization have not been used to address the question of what the conditions are on which states influence IOs in such a way that IOs commit themselves to protect human rights or comply with their own human rights standards. We can derive from liberal theories, however, that states push for human rights protection in IOs if they are confronted with demands by domestic actors such as national parliaments and courts or CSOs that operate at the national level. This presupposes, obviously, the existence of independent domestic actors in the member states. In many of the rising powers that have taken a more prominent role in IOs in recent years and are likely to become even more important in the years to come, domestic parliaments, courts and CSOs tend to be controlled by the government.

Constructivism also provides important insights into the dynamics of the legalization of world politics. Constructivism assumes that norms matter because they can shape the identities, interests and behaviour of actors in world politics (Finnemore 1999; Keck and Sikkink 1998). Where international legalization is concerned, constructivism assumes that actors can be persuaded that support for more legalization in global governance is appropriate. The creation and institutional design of the ICC has, for instance, been explained as being, at least in part, a function of state actors having been persuaded of the value of a permanent international court with the capacity to try individuals who have committed war crimes and grave human rights violations (Deitelhoff 2009; Fehl 2004). Others have highlighted the capacity of transnational CSOs to mobilize for the legalization of the international order and shame actors that oppose this process. Civil society organizations, for instance, played a major role in the creation of the Ottawa Treaty to ban anti-personnel landmines, setting the issue on the international agenda, framing it as a major humanitarian problem and stigmatizing the use of landmines (Rutherford 2000). These CSO strategies seem to be especially effective when they are built on a coalition of actors consisting of CSOs, some supportive states and individual celebrities. Such like-minded coalitions seem to be particularly conducive to the establishment of norms and rights against the interests of major powers (Axworthy 2001). Moreover, human rights are believed to have become part of world culture by now. They have become a global

script whose claim to validity per se is not fundamentally challenged any more (Elliott 2007; Strang and Meyer 1993). This plays into the hands of CSOs who can use rhetorical devices to entrap IOs in their commitments to human rights and publicly shame their non-compliance with internationally recognized human rights standards.

Finally, *historical institutionalism*, especially through its focus on causal mechanisms, can offer another valuable building block towards a theoretical account of the introduction of human rights protection provisions in IOs. Whereas most historical institutionalists point, in the first place, to self-reinforcing mechanisms and thus mainly explain the deepening of existing traits of international institutions,¹⁰ one of the leading figures in historical institutionalism, James Mahoney, has introduced the notion of *reactive sequences*: 'Reactive sequences are chains of temporally ordered and causally connected events. These sequences are reactive in the sense that each event within the sequences is in part a reaction to temporally antecedent events' (Mahoney 2000: 509). From this perspective, a response to the deepening of existing institutional traits may consist of resistance to this development or of demands for institutional change. Reactive sequences create room for agency and imagination. With this move, the concept of path dependence and causal pathways opens up the possibility of institutional innovation.

While historical institutionalism opens up the possibility of change or institutional innovation, it also holds assumptions as to what types of change are more or less likely. On a general level, historical institutionalism assumes that institutional change is directed – in other words, that it is to a certain extent determined by existing institutional structures that shape path-dependent evolution (Page 2006). Therefore, slow, incremental change is most likely to occur (Pierson 2004; Mahoney and Thelen 2009; Jupille et al. 2013). Nonetheless, on certain conditions, especially in the absence of self-reinforcing effects and the presence of undermining reactive sequences, fundamental changes can occur that break the institutional equilibrium that had been locked in before (Greif and Laitin 2004).

On the basis of these theoretical considerations, the next section develops in more detail the argument that the rise of institutional devices to protect individual rights takes place when IOs exercise public authority. We introduce the ALM as a causal model that explains the rise of human rights protection provisions in IOs. In order to move beyond the normative functionalism that is still built into this conjecture, we also introduce the notion of concrete – that is, choice-oriented – causal pathways that

¹⁰ See Orfeo Fioretos (2011) for a good discussion of historical institutionalism in IR. See also the contributions in Rixen et al. (2014).

lead to the variation in real-world institutional outcomes across different IOs. We also generate hypotheses on the specific trigger and success conditions of the different pathways.

3 Developing the Authority–Legitimation Mechanism (ALM)

In developing the ALM in theoretical terms, we argue in this section that the last two to three decades have brought changes that have undermined Westphalian sovereignty as a regulative idea (see, e.g., Grande and Pauly 2005; Simmons 2009; Zürn and Deitelhoff 2016). In addition to violations of sovereignty by major powers (see Krasner 1999), international institutions have developed procedures that challenge the consensus principle and the principle of non-intervention. In other words, international institutions nowadays exercise public authority.

International institutions have authority over states when the latter recognize, in principle or in practice, that the institutions can make competent judgments and decisions to which they are asked to defer, even if these run against their interests (see Zürn et al. 2012: 88; see also Cooper et al. 2008: 505).¹¹ For instance, the rulings of the WTO Dispute Settlement Body are regularly accepted even by the state that has lost the case. Besides international courts, other IO bodies, such as monitoring agencies and knowledge bodies, exercise public authority as well. The capacity to make judgments and decisions against the stated interests of at least a limited number of states requires either delegation of certain powers to the organization or a pooling of sovereignty in the form of a voting procedure that moves away from the principle of unanimity. International organizations that possess public authority thus have the capacity to delimit the autonomy of governments. Of course, the level of recognition can vary: from requests to commands that may be legally binding or not and that may be backed up by force or not. In general, however, it has been shown that the authority of IOs has increased significantly. Lenz et al. (2014), for example, show that IOs have more pooled and especially more delegated authority than three decades ago (see also Hooghe and Marks 2014; Zürn et al. 2014).

International organizations even exercise authority over individuals to the extent that they directly regulate their behaviour (see also Bodansky 2013; von Bogdandy et al. 2010). In this case, states lose their role as mediators between their citizens and the international level. For instance, sanctions imposed by the UNSC, originally intended to influence the

¹¹ For this conception of public authority, see, among others, Armin von Bogdandy et al. (2010) from the perspective of IL and Michael Zürn (2012) from the perspective of IR.

behaviour of states, now often address individuals such as terror suspects, warlords or autocrats and their protégés (Drezner 2011). In peace missions, likewise, direct authority relations arise between IOs and individuals, especially when such organizations assume government functions in transitional administrations. What is more, projects sponsored by the World Bank and the IMF, although formally implemented by recipient countries, have to respect strict requirements spelled out in Washington, and thus come close to wielding direct authority over individuals. In some cases, the link between IOs and individuals may lead to human rights violations, as the examples mentioned at the beginning of this chapter illustrate.

In any case, authority requires legitimation. Protest and resistance against international institutions grow to the extent that international institutions exercise authority but cannot build on sufficient stocks of legitimacy (Zürn et al. 2012). The ‘right to justification’ (Forst 2007) is now demanded of international institutions as well. It is called for by numerous so-called anti-globalization groups such as Attac, acting on the transnational level, as well as by resisters at the national level who seek to prevent the undermining of democratic sovereignty, for example, via referenda on European integration. The right to justification is also put forward by some formerly less powerful states against the dominance of strong Western states in international institutions. In other words, to the extent that the increased authority is used to pursue policies with winners *and* losers, we can expect more grievances against international institutions and stronger demands to justify these policies. The days of permissive consensus vis-à-vis international institutions are over. International authority needs to be legitimated, especially when there is danger that its activities violate human rights (Hooghe and Marks 2009; Zürn et al. 2012).¹²

We need to distinguish between two different levels of recognition in order to see the difference between authority and legitimacy. The first level refers to the recognition of an authority as desirable in principle in order to permit the achievement of certain goals. The recognition of the desirability in principle of an authority needs, however, to be distinguished from a second level of recognition, which involves the concept of legitimacy – that is, the recognition that an authority is being appropriately exercised in the context of shared normative principles (Suchman 1995: 547).

¹² We distinguish here between legitimation processes and legitimacy as a possible result of these processes (see also Beetham 1991; Nullmeier et al. 2010, 2012; Binder and Heupel 2015). While legitimation processes consist of authority practices, justifications and public debates, legitimacy is in the eye of the beholder, and refers to beliefs in the worthiness of a person or organization to hold authority.

An appeal to the public interest or to the common good of the collective which is being regulated represents the foundation of legitimate authority. Even traditional and religious justifications of rule are based on patterns which emphasize the common good and may still work very well in certain circumstances. Yet, faith in legitimacy dissipates immediately if the authorities and rulers are perceived as being exclusively self-serving or selfish. Non-compliance with standards that are promoted by a public authority is fatal as well. Double standards undermine legitimacy.

The mere reference to the common good and the avoidance of double standards is, however, insufficient as a legitimization strategy in modernity. The public interest claim needs to be supplemented with a reference to sources and procedures by means of which the public authority can give the appearance of serving the common good and avoiding double standards. Two patterns of legitimization for public authority are therefore prominently discussed in the literature, namely technocratic and republican legitimization. Both face limitations, however, when applied to IOs. Technocratic, or output legitimization (Gutner and Thompson 2010; Scharpf 1999), which assumes that good policy results are based on non-prejudiced expertise, no longer suffices as the sole or central source of legitimacy. Meanwhile, the republican, or democratic, legitimization pattern, which is based on the equal opportunity for participation in IO decision-making of all those affected by regulation (Held 1995; Zürn 2000) is very hard to achieve in the case of IOs given the lack of indispensable preconditions at the international level (Dahl 1989).¹³

A third pattern, namely the *liberal pattern of legitimization*, avoids these pitfalls. It is based on legal accountability, the protection of basic rights and the promotion of legal equality. The importance of the rule of law can be derived from the fundamental value of the autonomy of the individual (Tamanaha 2004). Decisions which protect and promote individual rights can, therefore, have a legitimacy-generating effect. Thus, national and international courts have a key role in this legitimization pattern. This model of legitimacy builds on the principle that those who violate rights should be legally accountable, and authorities who promote certain norms are bound by these norms as well.¹⁴ Taking into account procedural questions rather than merely focusing on output, the liberal legitimization

¹³ See Koenig-Archibugi (2011) for a recent contribution to the discussion of the (im) possibility of democratizing international institutions.

¹⁴ Accountability, in general, should not be confused with democracy. Accountability does not require the participation of those affected by regulations in specific decisions; it merely makes the decision-makers responsible ex-post for the decisions they have made – legally, electorally or in some other way. At issue here is control, not participation (Warren 2014; Zürn 2012). In the liberal legitimization pattern, legal accountability is central.

pattern is more demanding than technocratic legitimacy. At the same time, it is less demanding than the republican pattern, given its particular focus on basic rights protection rather than equal representation.

We thus presume that the rise of international authority increases the likelihood of human rights violations through IOs, social grievances and the demand for liberal legitimization. If the pressure suffices, IOs adopt institutional provisions intended to avoid human rights violations and to make them accountable for such violations. We label this causal mechanism the ALM. It can be presented in a formalized way as follows (Figure 1.1):

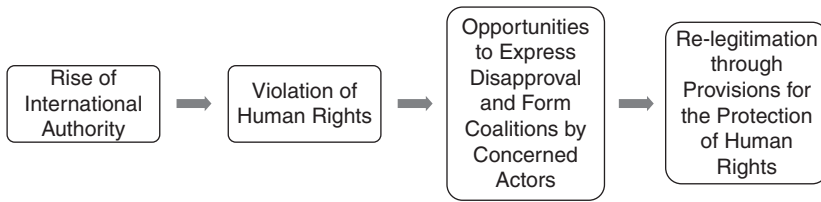


Figure 1.1: The authority–legitimation mechanism (ALM)

4 Testing the ALM

When social scientists use the term ‘explanation’, they often think about ‘independent variables’ causing ‘dependent variables’. If all goes well in such a *comparative logic*, a causal statement involves a correlation between the two variables and a theory that identifies the causal direction. A more recent version of causal reasoning instead points to *causal mechanisms*. On the most general level, this refers to ‘recurrent processes linking specified initial conditions and a specific outcome’ (Mayntz 2004: 241) or ‘a process by which a certain effect is produced or a purpose is accomplished’ (Gerring 2008: 178). Methodological individualists are interested in mechanisms involving individuals that causally connect two related macro-outcomes according to the logic of ‘Coleman’s bathtub’ (see Coleman 1986; Elster 1995; Hovi 2004). Others use the concept to refer more generally to recurrent processes that comprise a thick sequence or chain of events, thus reducing the distance between the independent and dependent variable (e.g., Bennett and Checkel 2015; Mayntz 2004). Or, to put it bluntly ‘t initiates the sequence x,y,z, which yields o’.

The ALM is a causal mechanism which is based on such a reactive sequence. While the powerful states and supranational bodies within them may be the drivers of authoritative IOs, actors other than key executives of

the international authority and of the core member states ask for legalization. Institutional change thus results from an interaction between key IO actors and ‘non-core’ actors, such as smaller member states, members of domestic parliaments, courts or CSOs. Given that the ALM represents a reactive sequence, choice is built into the causal mechanism. Therefore, none of the three steps identified in the model is deterministic. The mechanism can be stopped at each of the three arrows: not every IO with public authority violates human rights (take, for instance, the European Court of Justice); not every violation of human rights leads to visible social grievances (take, for example, many of the earlier UN sanction regimes); and not every form of protest leads to IO provisions for the protection of human rights (take, for instance, the Battle of Seattle and the resilience of the WTO). Each of the three steps is probabilistic – that is, it requires specific conditions to occur. It follows that, even when we observe something like normative functionalism on the aggregate level, the specific causes for IO provisions to protect human rights depend on specific circumstances that are contingent. And, finally, as we will argue in the next section, there are different pathways from international authority to human rights protection provisions – that is, different ways in which the causal mechanism plays out. We thus take into account the possibility of equifinality – the possibility that a final condition can come about in many different ways.

Our approach is deductive in the sense that it involves an *ex ante* specification of the causal mechanism (see the authority–legitimation link in Figure 1.1), which will then be tested employing the method of process tracing, which is a method designed to probe causal mechanisms (George and Bennett 2005: 206–207; Checkel 2006: 363). Process tracing involves the use of evidence from *within a case* to make causal inferences. We therefore needed to look at within-case developments and to select cases in which both the starting point (international authority) and the end point (human rights protection provisions) of the causal mechanism are given.¹⁵ Obviously, this selection of cases follows a different logic from comparative research. Yet it is advisable to introduce this ‘selection bias’ in order to be able to test whether the hypothesized intermediate steps really exist. The objection from the point of comparative research that selecting on the start and end points makes the theory irrefutable does not hold. As will be shown in Chapter 5, there is one case in which the hypothesized steps in between are not in place. Usually, process tracing is employed in single case study research. We deviate from this practice. In fact, the notion of *testing*

¹⁵ These are conditions also mentioned by Schimmelfennig (2015) for deductive (that is, in his view, efficient) process tracing.

causal mechanisms via process tracing makes it advisable to go beyond the one case which has often been the basis of the theoretical intuition in the first place. We therefore test the ALM in ten case studies.

With regard to the exercise of international authority as the starting point of the ALM, we examine IOs whose policies directly affect individuals and which have been accused of violating human rights in the exercise of their authority. We do not take into account whether the IOs themselves acknowledge that they violate human rights, but rely on allegations by international institutions and credible CSOs. Choosing the UN, the EU, NATO, the World Bank and the IMF, we focused on highly authoritative IOs.

Regarding the introduction of provisions for the protection of human rights as the end point of the ALM, we examine IO reactions to charges of human rights violations in ten case studies. Four cases cover UN and EU sanctions policy (see Chapters 3–6 by Heupel), another four UN and NATO peacekeeping (see Chapters 7–10 by Hirschmann) and two cases World Bank and IMF lending (see Chapter 11 by Heupel and Chapter 12 by Reinold). In these cases, the specific institutional responses of IOs to allegations of human rights violations vary. Most importantly, we distinguish between comprehensive provisions for protecting human rights in IOs, which most often include both prevention and complaints provisions, and more limited provisions, which most of the time contain only prevention provisions. Prevention provisions – that is, provisions by means of which the IO aims to avoid human rights violations in the first place – include, among other things, standard setting, monitoring and training. Complaints provisions serve to enable aggrieved individuals to hold to account and sanction the IO.¹⁶ We only take into account those institutional changes that have been instituted in the IOs and not their effects in terms of implementation and outcome. In some cases we can explicitly show, however, that the institutional provisions had effects and led to more effective human rights protection.

Table 1.1 provides a summary of the cases covered in our analysis. The main consideration guiding the case selection (beyond the presence of the ALM's starting and end points) has been to guarantee the generalizability of our findings – to different IOs, different policy instruments and provisions for the protection of different types of rights. Further, so as to minimize the effects of confounding variables, we have selected the cases in

¹⁶ We developed a fine-grained scheme to assess the level of protection in a numerical way, which allows for comparison across cases and includes both prevention and complaints provisions (see Chapter 2).

Table 1.1: *Overview of cases*

| Policy | IO | Human Rights Violation |
|--------------|------------|---|
| Sanctions | UN | Subsistence rights |
| | UN | Due process rights |
| | EU | Subsistence rights |
| | EU | Due process rights |
| Peacekeeping | UN | Bodily integrity rights and the right not to be subjected to inhuman or degrading treatment |
| | UN | Due process rights |
| | NATO | Bodily integrity rights and the right not to be enslaved |
| | NATO | Due process rights |
| Lending | World Bank | Subsistence and cultural rights |
| | IMF | Subsistence rights |

a way that allows us to conduct pair comparisons between different IOs that introduce protection provisions related to the very same policy instrument.¹⁷

The central result of our analysis is that the *authority–legitimation link* works in nine out of our ten cases. With the exception of the case of comprehensive EU sanctions infringing the subsistence rights of innocent individuals, all cases involved charges that an IO had violated human rights. This led to normative disapproval, especially by CSOs. Together with other actors who were not decision-makers in a central government or the IO (middle powers, parliaments, courts, other IOs, the media), they managed to exercise such an influence that the central decision-makers in the IO opted for the adoption of provisions for the protection of human rights. In only one case, central decision-makers in the EU anticipated the possibility of human rights violations and the ensuing disapproval and acted in an anticipatory mode that is not directly captured by the ALM. Arguably, however, the EU foresaw the possibility of hardship brought about by comprehensive trade sanctions and the ensuing criticism only against the background of similar experiences by the UN. In this way, the anticipatory action in this case can be seen as parasitic on the causal mechanism we hypothesized. The ALM was foreseen and EU decision-makers launched respective reforms in an anticipatory way.¹⁸ Overall, we see the evidence gathered in the case studies as strong support for the hypothesized causal mechanism.

¹⁷ See Chapter 2 for a detailed discussion of case selection.

¹⁸ Relating this pathway to the ALM in this way points to the possibility of the pathway's becoming more important over time, especially if smaller and less authoritative IOs

5 Identifying the Pathways Constituting the ALM

Purely deductive research has a downside in that it may overlook interesting inductive insights ‘not anticipated on the basis of . . . prior alternative hypotheses’ (Bennett and Checkel 2015: 29–30). We therefore combine the deductive with an inductive approach by taking two methodologically separate steps. In so doing, we introduce the notion of *causal pathways* in order to show that the same causal mechanism can take effect via different pathways. Most social mechanisms consisting of a number of probabilistic causal chain-links are likely to involve different pathways through which the mechanism takes effect. ‘Pathways’ in our use thus refers to more concrete realizations of a more abstract concept: causal mechanisms.¹⁹ Causal pathways, therefore, require greater specification of actors, sequence, action and choice than causal mechanisms and constitute specific instances of the more general notion of equifinality. The same outcome – human rights protection provisions in IOs – may be the result of different general causal mechanisms. For instance, besides the ALM, there might also be a major-powers-wanting-to-control-IO-bureaucrats mechanism that would lead to the same outcome (although none of our evidence points in this direction). Yet, equifinality may also occur when the same general mechanism works through different pathways. To use an example, Merton’s (1968) Matthew effect in science – arguably one of the archetypes of social science causal mechanisms – can take place via different pathways: That success breeds success can be due to the reputation-building effect of early success, but it can also be due to the investment advantages enjoyed by institutions with early success in fund-raising. These two different pathways belong to the same causal mechanism to the extent that they produce equifinal outcomes.

We want to explicate this notion of causal pathways by briefly discussing Beth Simmons, Frank Dobbin and Geoffrey Garrett’s (2008) use of the term ‘causal mechanism’. They distinguish between coercion (‘manipulation of incentives by powerful actors’), competition (‘market incentives’), learning (‘change in beliefs’) and emulation (‘logic of appropriateness’). All four types connect the presence of a dominant liberal script with the outcome of a diffusion of liberal norms. The typology of causal mechanisms employed in this influential study is built on the distinction between different modes of action: strategic vs. deliberative vs. norm-driven, the first being differentiated into centralized (coercion) and decentralized (competition) contexts.

emulate the protection provisions that have been established in prominent and powerful IOs (see the discussion in the Conclusion).

¹⁹ The demarcation between mechanism and pathway is thus fluid.

The construction principle of this typology is one of clearly distinguishable modes of action. Simmons et al. concede, however, that ‘the diffusion mechanisms we discuss are sometimes commingled and the lines between them are not always sharp’ (2008: 10). Indeed, the studies that employ typologies that distinguish different modes of action tend to conclude that a specific result cannot be explained by a single mechanism, but only by the interplay of different mechanisms such as socialization, persuasion, litigation, lesson-drawing and mimicry (see Börzel and Risse 2012; Heupel 2013). In this sense, a causal mechanism can contain different modes of action in two ways. On the one hand, the *act* of demanding institutional reforms may operate in parallel with incentive manipulation and persuasion, while the response of the IO very often contains elements of strategic adaptation, learning and following institutional fashions at the same time. On the other hand, the events that connect the trigger with the outcome in a causal chain may contain different modes of action in the *same chain*. Something that starts out as strategic adaptation may, in the end, lead to learning. When a *causal chain* consists of a set of actions and reactions, it is extremely unlikely that the whole process can be reduced to one mode of action (see Petersen 1999).

We thus proceed on the assumption that a mechanism can contain different logics of action. This opens up the possibility of distinguishing among different components of a more comprehensive causal mechanism. These components can also be conceived of as sub-mechanisms (Gehring and Oberthür 2009) and can best be grasped in terms of different modes of action following typologies such as those used by Beth Simmons et al. (2008) or Tanja Börzel and Thomas Risse (2012).

In addition, we use a second logic to disaggregate a causal mechanism with a broader compass such as our *authority–legitimation link* and break it down into subtypes. As mentioned earlier, the notion of reactive sequencing (Mahoney 2000) brings in actors and probabilistic choices, and thus equifinality. Although emphasized in the general discussion of process tracing, the notion of equifinality is only rudimentarily developed in this literature.²⁰ We argue, however, that it is central to analysing causal mechanisms and submit that a causal mechanism such as the ALM can take effect via different *causal pathways*, depending on actor choices. The same causal mechanism may be put into force via different actors and activities. Causal pathways, therefore, are more specific in terms of actors, activities and choices than the more general causal mechanisms.

²⁰ In the introduction to their state-of-the-art collection of essays on process tracing, Andrew Bennett and Jeffrey T. Checkel (2015) mention the notion of equifinality quite prominently. However, it is not further explored in the volume.

In our case, questions as to which actors express social grievances and which coalitions they form in an effort to change the institutional practice of an IO are the most important in distinguishing among different pathways through which the ALM can take effect. Hence, we have developed a simple conceptual action–reaction scheme that enables us to identify recurrent real-world chains of events following the logic of interactive sequences and leading to institutional change.²¹ In this sense, the very same component, or event (e.g., lesson-learning by the IO bureaucracy), can be part of different causal pathways, but the pathways differ from each other as regards the configuration of different components and their relative importance. In addition to the already mentioned case of anticipatory reform by the IO administration, we can distinguish among cases in which the decisive input was made by the US Congress, by the European Court of Justice (ECJ) and by a coalition of CSOs and like-minded states. We therefore distinguish four separate causal pathways, which we develop in more detail in the conceptual and concluding chapters. For the labelling of these pathways, we primarily focused on the type of actor able ‘to make a relevant difference to the outcome of interest’ (Hedström and Ylikoski 2010: 53), taking into account assessments made in secondary sources and by interviewees as well as counterfactual reasoning. As a result, each of our ten cases is assigned to one of the following four causal pathways:²²

- *Legislative institution-building*: In this pathway, a central role is played by legislative actors in member states of the IO concerned. Advocates of institutional reform for the protection of human rights find a point of connection in the parliament of a member state (Hasenclever 2001). Put under pressure by the legislature, the executive of the state then deploys its power resources to bring about reforms in the IO.
- *Judicial institution-building*: In this pathway courts give the decisive impetus to the establishment of provisions for protecting human rights in IOs. These can potentially be courts within IO member states or international courts. Given the high authority of courts and the typically heterogeneous constellation of interests among member states, IOs have difficulty in ignoring judicial rulings or penalizing courts for unwelcome rulings (Tallberg 2000). As a result, judges become important actors in establishing the protection of individual rights in IOs (Stone Sweet 2000).

²¹ This means that we do not understand ‘inductive’ in a naive way – that is, assuming that there can be observation in the absence of ordering concepts. We do, however, use ordering concepts that are so basic that they are common to most social science theories. Some label such an approach ‘abductionist’.

²² We thank Gisela Hirschmann for her contribution to the conceptualization of the four pathways. See Heupel et al. (2015) for a more extensive discussion of the pathways.

- *Like-minded institution-building*: The driving forces for institutional reform in this pathway are so-called like-minded actors with a common agenda but little hard power, such as the executives of medium-sized powers, CSOs, scientists and individuals, as well as bodies within the IO with fewer formal powers (Cooper 2002). They delegitimize IOs and the great powers dominating them by documenting the violation of rights and decrying the lack of reliable protection procedures. At the same time, they develop proposals on what reliable protection provisions might look like (see Keck and Sikkink 1998).
- *Anticipatory institution-building*: This pathway points to a process in which the central governmental or administrative decision-makers of an IO introduce provisions for the protection of human rights based on an internal learning process in the absence of significant external pressure. It is a reflexive process which results from the evaluation of one's own behaviour in the light of the behaviour of others.

In our research, we proceeded as follows: First, we theoretically identified the *authority-legitimation link* as a causal mechanism defined by a starting point and an end point plus a causal chain that involves three steps, each of them consisting of a probabilistic relationship. On this basis, we next developed an action–reaction model compatible with this causal mechanism and serving as a tool both for testing the causal mechanism and for inductively developing concrete causal pathways.²³ Then, we tested the ALM in ten case studies (Table 1.2). In these ten cases, we lastly identified in an inductive way four equifinal pathways that add agency and choice to the mechanism.

6 Explaining Variance Among the Cases

Having uncovered four distinct pathways through which the ALM unfolds, we moved out of the realm of process tracing and entered the realm of comparative logic to assess causality. The possibility of adding comparisons to process tracing comes from our having studied ten cases, and from the fact that the institutional outcomes in these cases differ. In binary terms, we distinguish between limited provisions for human rights protection (five cases) and comprehensive ones (also five cases) (Table 1.3).²⁴

Differences in terms of the quality of the human rights protection provisions obviously raise questions concerning the explanation of this variance. Why did different pathways evolve in different cases, and what makes a pathway more or less effective in terms of leading to comprehensive

²³ The model will be specified in Chapter 2.

²⁴ The more fine-grained way to assess the differences in institutional outcome will be presented in Chapter 2.

Table 1.2: *Pathways and cases*

| Pathways | Cases |
|-----------------------------------|---|
| Legislative institution-building | <ul style="list-style-type: none"> • NATO Peacekeeping: Bodily integrity rights and the right not to be enslaved • World Bank Lending: Subsistence and cultural rights |
| Judicial institution-building | <ul style="list-style-type: none"> • UN Sanctions: Due process rights • EU Sanctions: Due process rights |
| Like-minded institution-building | <ul style="list-style-type: none"> • UN Sanctions: Subsistence rights • UN Peacekeeping: Bodily integrity rights and the right not to be subjected to inhuman or degrading treatment • UN Peacekeeping: Due process rights • NATO Peacekeeping: Due process rights • IMF Lending: Subsistence rights |
| Anticipatory institution-building | <ul style="list-style-type: none"> • EU Sanctions: Subsistence rights |

Table 1.3: *Quality of human rights protection provisions*

| Comprehensive provisions | Limited provisions |
|--|---|
| <ul style="list-style-type: none"> • EU Sanctions: Due process rights • UN Peacekeeping: Bodily integrity rights and the right not to be subjected to inhuman or degrading treatment • World Bank: Subsistence and cultural rights • UN Sanctions: Due process rights • UN Peacekeeping: Due process rights | <ul style="list-style-type: none"> • NATO Peacekeeping: Bodily integrity rights and the right not to be enslaved • UN Sanctions: Subsistence rights • EU Sanctions: Subsistence rights • IMF Lending: Subsistence Rights • NATO Peacekeeping: Due process rights |

provisions? What are the conditions which make societal disapproval strong enough to have an effect? Why did some IOs start the reform process earlier than others?

In answering these questions, we no longer used the logic of process tracing; instead, we *compared* different processes. Without doubt, the focus of our project was on testing the causal mechanism via process tracing and identifying the different pathways along which the mechanism plays out. The comparative processes approach that we used in this part of our analysis, therefore, has an inductive take and is methodologically less rigorous. The testing of the causal mechanism via process tracing made it necessary to pick cases that include both the trigger and the institutional adaptation. The power of comparisons is limited, though, since the cases have been selected on the dependent variable (see King et al. 1994). We are

not able to *test* these hypotheses properly with our selection criteria. Therefore, all of the following has a hypothesis-generating character.

Our comparison of different pathways refers back to the model of the ALM (see Figure 1.1). We have argued that all three causal links built into the mechanism are probabilistic in nature. This means that, at each of the three links, the process can potentially stop. This never happened in our set of cases. Each of the three causal links involves agency and room for choice. To what extent the authoritative power of IOs is abused and leads to the violation of human rights is a matter of choice. The extent to which these violations lead to social disapproval is a function of people's ability to decry and politicize the misconduct. The extent to which social disapproval leads to institutional change depends, again, on choices made by those who can exercise pressure on IOs, as well as on the choices made by the central decision-makers in IOs who have to decide about the protection provisions. These choices by actors may not only determine the causal pathway taken, they may also affect the final outcome and the quality of the human rights protection provisions that emerge.

International Authority and Human Rights Violations: Regarding the first step in the model – that is, the connection between the authority of international institutions and their violation of human rights – it seems that a considerable amount of authority is indeed necessary, but not a sufficient condition for the violation of human rights. It should be noted, however, that there does not seem to be a clear-cut connection whereby any increase in authority leads to a greater likelihood of human rights violations. The EU is the most authoritative institution in our sample and exercises direct authority over individuals, but it did not violate human rights in one case of our sample. It should be kept in mind, though, that we selected only IOs with a high level of authority and, therefore, have little variance in this respect.

Trigger conditions: Regarding the second step in the model (the connection between human rights violations and opportunities to delegitimize an IO), we were able to identify a relevant association. Drawing on the concept of opportunity structures, we can see that, in each of our cases, political opportunities – associated with the specificities of human rights violations and the institutional setting surrounding the IO – seem to have a significant impact on the path chosen. Opportunity structures are comprised of specific configurations of institutional possibilities and historical precedents for social mobilization, which facilitate the development of protest in some instances and constrain them in others (Kitschelt 1986; Koopmans 1999). We employ a concept of opportunity structures that has both discursive and institutional aspects to identify factors that may explain which causal pathway is chosen. Several features of the

human rights violations and the IO's institutional environment are relevant (see Chapter 2 and the Conclusion for a more detailed discussion).

- *Independent Parliament*: The presence of parliaments in which even the majority party acts with some independence from the executive provides a useful anchor for putting IO issues on the agenda and prompting the executive to play out its influence in the IO (legislative institution-building).
- *Justiciability*: Litigable human rights violations – that is, violations of civil or political rights rather than social and economic rights – provide an opportunity to bring about IO reform through court proceedings (judicial institution-building).
- *Visibility*: If human rights violations can be made visible – that is, if they lend themselves to a powerful campaign – like-minded actors can mobilize against the IO (like-minded institution-building).
- *Role Model* and *Open Culture*: The presence of peer IOs that are considered to be important and have already been pressed to introduce human rights protection provisions may trigger foresightful IO reforms. If the IO has an organizational culture conducive to learning it can draw lessons from peer IOs for its own institutional design (anticipatory institution-building).

Conceived in this way, it seems, first of all, necessary that at least one of these opportunities is present to organize a sufficient level of social disapproval. In addition, the type of opportunity structure seems to be important to condition which pathway is taken. If an IO does not commit human rights violations, the presence of a prominent IO with human rights protection provisions can serve as a role model. In this case, we see protection provisions emerge in IOs without prior human rights violations if the IO has the capacity to learn. If violations have taken place, it is helpful for those who want to see institutional change in an IO if an independent parliament exists in a member state or a court can be used. If this is not the case, the possibility of publicly condemning the human rights violations is required in order to build a strong like-minded coalition that can influence core decision-makers in the IO without the support of a national parliament or a court.

Success conditions: We measure the quality of the institutional outcome by distinguishing between limited provisions for the protection of human rights and comprehensive provisions. For a higher quality of institutional outcome, the extent to which actors in favour of human rights protection provisions can exercise pressure on key decision-makers in the IO is most relevant. Thus, in the final link in the mechanism's chain – namely, the link between the opportunity to delegitimize an IO and the introduction of provisions for the protection of human rights – power becomes

especially important. There are several features of the IO and its institutional environment that have an influence on whether the IO establishes comprehensive, rather than merely limited, human rights protection provisions. These features also relate to political opportunities as they refer to favourable characteristics possessed by the IO and the possibilities for external or non-core actors to exert pressure on it (see Chapter 2 for more details).

- *Strong Parliament and Low Sovereignty Costs*: Legislative institution-building gives rise to comprehensive provisions if the parliament targeted by the societal actors is strong – that is, if it is located in a powerful country with a significant influence on key decision-makers in the IO, and if the sovereignty costs for the government of introducing such provisions are small.
- *Strong Court*: Similarly, judicial institution-building leads to comprehensive provisions if the courts that challenge the IO are strong – that is, if they either have jurisdiction over the IO or control the implementation process in strong member states.
- *Vulnerable Identity and Open Culture*: Like-minded institution-building only leads to comprehensive human rights protection provisions if the target IO is vulnerable – that is, if human rights are firmly embedded in its identity – and when it has an open and flat organizational culture that is conducive to learning.
- *Role Model with Comprehensive Provisions*: Anticipatory institution-building seems to produce comprehensive provisions if the international role model also maintains comprehensive provisions.

We can now combine the findings of process tracing and process comparison to present the overall model that will be developed in this volume. It consists of a general causal mechanism, which can play out via different causal pathways and may lead to different outcomes, each time depending on specific trigger and success conditions (Figure 1.2). This figure summarizes the causal argument made in this book.

7 Short Preview of the Chapters

Chapter 2 (by Monika Heupel and Gisela Hirschmann) specifies the operationalization of the concepts and methods used in this study and discusses the criteria for case selection. It presents the dependent variable, namely provisions for the protection of human rights in IOs, and its operationalization, including the specification of rules for the allocation and aggregation of values. It also determines a threshold to differentiate between limited and comprehensive protection provisions. Furthermore, it explains the procedure used to identify causal pathways in the case

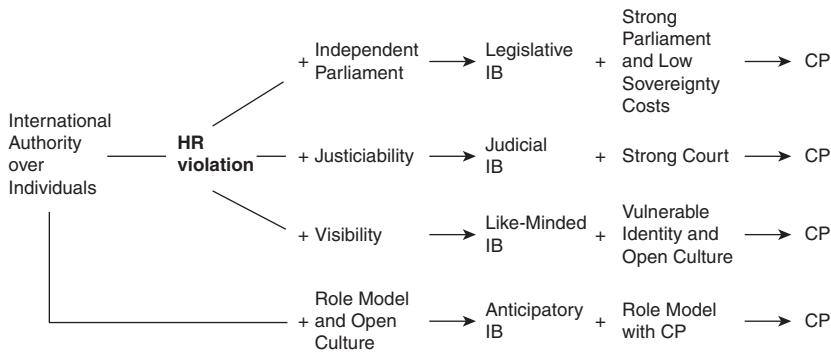


Figure 1.2: The authority-legitimation mechanism (ALM) elaborated
 HR = Human Rights
 IB = Institution-Building (= at least limited provisions for the protection of HR)
 CP = Comprehensive Provisions

studies and how they have been empirically corroborated. It presents and operationalizes trigger and success conditions for the causal pathways.

Chapters 3 to 7 deal with the development of human rights protection in the *sanctions* policies of the UN and the EU. Chapter 3 (by Monika Heupel) examines the evolution of provisions for the protection of the subsistence rights of affected individuals and communities in UN sanctions policy. It shows that the UNSC has improved its protection provisions since the early 1990s, as it has shifted from comprehensive trade embargoes to targeted sanctions, begun to grant humanitarian exemptions and provided for humanitarian impact assessment. These developments primarily go back to the efforts of a strong coalition of like-minded actors. Civil society organizations, academics, UN officials and bodies belonging to other IOs exerted intense pressure, especially by documenting the negative effects of the sanctions regime against Iraq on the well-being of the civilian population. They also familiarized UN member states with detailed proposals as to how subsistence rights can be effectively safeguarded in UN sanctions policy. The case shows that even the UNSC, which tends to be adamant about preserving its own autonomy, may accede to the establishment of provisions for the protection of human rights if confronted with strong and sustained pressure by like-minded actors.

Chapter 4 (by Monika Heupel) analyses the evolution of provisions for the protection of due process rights in UN sanctions policy. Since the

early 2000s the UNSC has facilitated the access of blacklisted individuals to information regarding the reasons for their listing. It has also introduced two complaints mechanisms, a *Focal Point* and an ombudsperson, that accept requests for delisting from blacklisted parties. In this case, judgments by the Court of Justice of the EU were decisive in triggering UNSC action. In particular, two judgments in the landmark Kadi case, which declared the implementation of UN sanctions in the EU illegal unless due process standards are met, forced the UNSC to improve its protection provisions. Highlighting the pivotal role of the EU Court, the case points to the opportunities for contestation that the multi-level character of UN sanctions policy opens up.

Chapter 5 (by Monika Heupel) depicts the emergence of provisions for the protection of subsistence rights in EU sanctions policies. Like the UN, the EU introduced, and over time refined, provisions for humanitarian exemptions and humanitarian impact assessment. Moreover, it completely abstained from comprehensive sanctions, limiting itself to the use of targeted sanctions. The chapter argues that the EU did so mainly for fear of becoming the target of a powerful campaign, as the UN had done before. The EU itself was never the object of criticism; EU officials and representatives of EU member states took notice of the public relation crisis the UN suffered, however. They also participated in many meetings relating to the reform process at the UN and drew lessons for EU sanctions policy. The case thus shows that IOs with the ability to learn from the experience of a reference organization can, so to speak, preventively commit to human rights protection without immediate pressure to do so.

Chapter 6 (by Monika Heupel) covers the evolution of provisions for the protection of due process rights of individuals blacklisted in the context of EU sanctions policy. Blacklisted parties now have the right to know what allegations have been made against them. Moreover, the Lisbon Treaty explicitly states that listed parties can ask the Court of Justice of the EU to assess the lawfulness of the measures enacted against them. As in the case of the UN, these reforms have primarily come about due to pressure from courts, especially the Court of Justice of the EU. The case, therefore, underlines the fact that judicial lawmaking by the Court of Justice of the EU is an important driver of the constitutionalization of the EU with regard to its sanctions policy.

Chapters 7 to 11 deal with the emergence of human rights protection provisions in UN and NATO *peacekeeping*. Chapter 7 (by Gisela Hirschmann) examines the evolution of provisions in the UN to prevent the sexual abuse of women and children by UN peacekeepers. Since the early 2000s, the UN has taken measures in this regard and explicitly prohibited any form of sexual exploitation in a *zero-tolerance policy*. It also

established *conduct and discipline units/teams* within the UN Secretariat and in individual missions to standardize training of peacekeepers and allow victims to submit complaints. In this case, it was primarily the efforts of a coalition of like-minded actors that pushed through the reform process. Civil society organizations and other concerned actors publicly documented the rights violations committed by the UN. This case thus demonstrates how a coalition of supposedly weak actors made the UN recognize the importance of introducing protection provisions to confront the issue of sexual abuse and exploitation in peacekeeping.

Chapter 8 (by Gisela Hirschmann) traces the evolution of provisions for the protection of the due process rights of individuals detained by UN peacekeeping missions. In the late 1990s the UN Secretary-General published a bulletin that stated that the treatment of detainees in UN peace missions should be in line with the Geneva Conventions and customary IL. In parallel, the UN mission in Kosovo appointed an Ombudsperson, who was later replaced by the *Human Rights Advisory Panel*, to investigate complaints against UN personnel. In this case, too, changes in the UN came about via the pathway of like-minded institution-building. The analysis shows how the exchange of knowledge and interaction between the UN bureaucracy and external actors led to the evolution of human rights protection provisions for detainees.

Chapter 9 (by Gisela Hirschmann) covers the evolution of safeguarding provisions related to the involvement of NATO personnel and other actors under NATO command in human trafficking. The main instruments are the *Policy on Combating Trafficking in Human Beings* and a *code of conduct* for military and civilian personnel. NATO also developed related training modules but refrained from establishing a complaints mechanism. The case study shows that the leadership of the Norwegian and especially the American Permanent Representative to NATO was important in the reform process. The intervention of the US Permanent Representative was, significantly, preceded by investigations by the US Congress, which had prompted the US president to forbid any involvement in human trafficking by US personnel during NATO missions. This case thus reveals the important role of member states in institutional reform within NATO and how individual state representatives can influence the development of human rights protection provisions.

Chapter 10 (by Gisela Hirschmann) is a case study on the creation of provisions for the protection of the due process rights of detainees arrested by NATO forces. For its Kosovo Force (KFOR), NATO published a directive that banned arbitrary detentions. It also authorized the *Detention Review Panel* to accept complaints by individuals against KFOR. As in the case of the UN, institutional change in NATO resulted

from the persistent efforts of like-minded actors. NATO came under fire when not only NGOs but also other IOs such as the Council of Europe publicly denounced detention practices in Kosovo as incompatible with international humanitarian law. When the allegations seriously threatened to blemish NATO's reputation, the organization agreed to reforms. This case demonstrates that even a security-focused organization such as NATO may react to pressure from human rights groups and introduce some – however limited – protection provisions for detainees' rights.

Chapters 11 and 12 present two cases connected with human rights protection provisions agreed to by the World Bank and the IMF. Chapter 11 (by Monika Heupel) introduces a case study on World Bank lending. As early as the 1970s and 1980s, the World Bank began to introduce safeguards policies committing Bank officials to assess the social and environmental consequences of Bank-funded projects on local communities. The Bank also gradually built up the institutional capacity to monitor compliance with its safeguards policies. In the 1990s it set up the *Inspection Panel* that allows aggrieved individuals to hand in complaints against the Bank. The reforms for the most part resulted from interventions by the US, the Bank's dominant member state. The US Executive Director at the World Bank, however, had himself come under pressure when the US Congress, mobilized by a powerful civil society campaign, repeatedly tied the release of funding for the Bank to relevant reforms. The World Bank on several occasions bowed to the pressure, mainly as a result of its dependence on US funding. The case reveals that even IOs whose impact on individuals is mediated by government actors commit to policies designed to avert harm from individuals if there is sufficient pressure to do so.

Chapter 12 (by Theresa Reinold) deals with IMF lending. The Fund has over the years developed at least limited provisions to mitigate the negative externalities of its austerity programmes. The central instrument is the *Poverty and Social Impact Analysis* (PSIA), which calls upon IMF staff to assess the social consequences of IMF-funded projects and pre-empt potential negative social externalities. The PSIA is non-binding, however, and its wording is very vague. Moreover, unlike the World Bank, the IMF has not introduced a complaints mechanism that aggrieved individuals can use to review whether PSIA is properly conducted. The institutional reforms can be traced back to the efforts of a coalition of like-minded actors. The case demonstrates that even an IO such as the IMF, which constantly refers to its apolitical, technocratic character, is not fully immune to calls to establish provisions for the protection of human rights.

The Conclusion (by Monika Heupel and Michael Zürn) provides a summary of the findings of the book by developing a tree capturing

the decision points and possible outcomes of different pathways. The conclusion also highlights three broader theoretical implications of the book's findings. First, it draws attention to the dialectic relationship between the rising authority of IOs and their constitutionalization, or between the violation of human rights and the international rule of law. Authority enhances IOs' freedom to act but also gives rise to heightened legitimacy expectations. Increased authority is thus a double-edged sword for IOs as it at one and the same time expands their scope for action and compels them to subject themselves to control. Second, the emergence of human rights protection in IOs as an expression of their commitment to the rule of law is a heavily contested political process in which sometimes courts, CSOs and other non-state actors succeed over powerful state opponents. Third, the duty to ensure that human rights are protected has by now become an integral part of the legitimacy expectations that powerful IOs face. What in our cases required strong contestation to evolve has now become part of a script diffusing across IOs.

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