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International organisations and human rights: What direct authority needs for its legitimation

Monika Heupel*
Junior Professor for International and European Politics, Otto-Friedrich-Universität Bamberg

Gisela Hirschmann**
Assistant Professor of International Relations, Leiden University

Michael Zürn***
Professor, Director of the Research Unit Global Governance, WZB Berlin Social Science Center

Abstract

Human rights violations by international organisations (IOs) are a possible side effect of their growing authority. Recent examples are the cases of sexual exploitation by UN peacekeepers and violations caused by IMF austerity measures. In response, IOs increasingly develop safeguards to protect human rights from being violated through their policies to regain legitimacy. We argue that this development can be accounted for by a mechanism we call '*authority-legitimation mechanism*'. We test this theoretical expectation against ten case studies on UN and EU sanctions policies, UN and NATO peacekeeping and World Bank and IMF lending. Next, we demonstrate inductively that the authority-legitimation mechanism can evolve through different pathways, depending on which actors get engaged. We label these pathways *legislative institution-building* if parliaments in member states put pressure on their governments to campaign for human rights safeguards in IOs, *judicial institution-building* if courts demand human rights safeguards, *like-minded institution-building* if civil society organisations, middle powers and IO bodies with little formal power push for human rights safeguards, or *anticipatory institution-building* if IOs adopt such safeguards from other IOs without having violated human rights themselves. Finally, we argue that which of these pathways are activated and how effective they are depends on specific conditions.

Keywords

International Organizations; Human Rights; Authority; Legitimacy; Legitimation

Introduction

In the early 2000s, terror suspects included in the blacklist of the United Nations (UN) Security Council sanctions regime against Al-Qaeda and the Taliban had no right to know if they were

*Correspondence to: Monika Heupel, Junior Professor for International and European Politics, Otto-Friedrich-Universität Bamberg, Feldkirchenstr. 21, 96045 Bamberg, Germany. Author's email: monika.heupel@uni-bamberg.de

**Correspondence to: Gisela Hirschmann, Assistant Professor of International Relations, Leiden University, Pieter de la Court Building, Wassenaarseweg 52, 233 AK Leiden, Netherlands. Authors email: g.k.hirschmann@fsw.leidenuniv.nl

***Correspondence to: Michael Zürn, Professor, Director of the Research Unit Global Governance, WZB Berlin Social Science Center, Reichpietschufer 50, 10785 Berlin, Germany. Author's email: michael.zuern@wzb.eu

blacklisted, let alone what allegations had been made against them. Nor did they have the right to challenge their listing before a political or administrative body, let alone a court. Suggesting that this represented a flagrant violation of the right to due process, a Canadian judge famously likened the fate of a blacklisted terror suspect he represented to that of Kafka's Josef K. in *The Trial*.[1] Since then, protection of the due process rights of blacklisted terror suspects has been continuously improved. Today, listed individuals not only have the right to know that a travel ban and assets freeze have been imposed upon them, but also why. Moreover, the Security Council has appointed an ombudsperson who accepts complaints by listed parties and publicly advises the Council on whether the individuals who make the complaints should be delisted. So far, the Security Council has in most cases followed this advice, thus *de facto* accepting a significant restriction of its scope of action. Within a decade the UN Security Council's sanctions regime has thus transitioned from one that blatantly violated human rights to one that even formerly fierce critics now attest shows 'essential elements of due process'.[2]

This is just one among many examples illustrating how international organisations (IOs) have established provisions for the protection of the human rights of individuals affected by their policies. But how did this specific type of institutional change within IOs come about? Standard International Relations (IR) theories do not answer this question satisfactorily. According to rational institutionalism, state interests are what drive IOs to legalise their activities. States favour legalisation if this reduces transaction costs and helps them to make credible commitments and solve the problem of incomplete contracting.[3] None of these interests are served by IO procedures that ensure due process for individuals. Rational institutionalists ought, therefore, to be sceptical about IOs committing to human rights protection. Liberal theories that stress the importance of domestic parliaments, courts and civil society in bringing about international legalisation have so far been used to explain states' commitment to, and compliance with, international human rights law.[4] What has yet to be examined is whether domestic actors in IO member states also drive the evolution of human rights safeguards. From a two-level perspective, however, one would expect governments to have an incentive to keep IOs free from obligations that might reduce their opportunities to delegate 'difficult' decisions to the IO level.[5] Constructivist scholars have shown that persuasion and shaming, especially by transnational civil society organisations (CSOs), can lead states to establish strong mechanisms for the protection of human rights at the

[1] Antonios Tzanakopoulos, 'Domestic court reactions to UN Security Council sanctions', in August Reinisch (ed.), *Challenging Acts of International Organizations before National Courts* (Oxford: Oxford University Press, 2010), pp. 54–76 (p. 55).

[2] Sue E. Eckert and Thomas J. Biersteker, 'Due Process and Targeted Sanctions: An Update of the "Watson Report"' (Providence, RI: Watson Institute for International Studies, Brown University, 2012), p. 36, available at: {http://www.watsoninstitute.org/pub/Watson%20Report%20Update%2012_12.pdf} accessed 23 May 2017.

[3] Kenneth W. Abbott and Duncan Snidal, 'Hard and soft law in international governance', *International Organization*, 54:3 (2000), pp. 421–56.

[4] Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009); Andrew Moravcsik, 'Liberal theories of international law', in Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge: Cambridge University Press, 2013), pp. 83–118.

[5] Andrew Moravcsik, 'Introduction: Integrating international and domestic theories of international bargaining', in Peter B. Evans, Harold K. Jacobson, and Robert D. Putnam (eds), *Doubled-Edged Diplomacy: International Bargaining and Domestic Politics* (Berkeley, CA: University of California Press, 1993), pp. 1–41; Robert D. Putnam, 'Diplomacy and domestic politics: the logic of two-level games', *International Organization*, 42:3 (1988), pp. 427–60.

international level.[6] But again, no one has yet explored which CSO strategies bring IOs to accept their responsibility for the protection of human rights.[7]

The purpose of this article is to fill this gap. We develop the authority-legitimation mechanism (ALM) and argue on the basis of a test covering ten case studies that it can explain why IOs develop provisions for the protection of human rights.[8] In short, the ALM posits that expanding the authority of IOs increases their propensity to violate human rights. This in turn provokes efforts at delegitimation and demands for the creation of human rights safeguards. If the authority-challengers find coalition partners, then IOs accept their responsibility for the protection of human rights and introduce relevant provisions. This explanation hints at a causal mechanism derived from the Weberian sociology of domination, according to which actors who are perceived to exercise authority need to nurture beliefs in their legitimacy among constituencies and audiences.[9]

The ALM, we argue, can develop through different pathways and is therefore characterised by equifinality. Equifinality means that an outcome – in our case human rights safeguards in IOs – can be reached in a variety of ways.[10] We therefore combine the deductive element of testing a mechanism (the ALM) with an inductive element uncovering the more specific pathways through which the mechanism materialises. In one such pathway, parliaments in IO member states put pressure on domestic governments to campaign for human rights safeguards in IOs (legislative institution-building). In another pathway, domestic or international courts demand human rights safeguards in IOs (judicial institution-building). A decisive input may also come from so-called like-minded actors such as CSOs, middle powers and IO bodies with little formal power who expose rights violations by IOs and develop proposals for reform (like-minded institution-building). Finally, IOs may develop safeguards following the example of a role model (anticipatory institution-building). All in all, we show that IOs introduce human rights safeguards as a legitimation device to counter real or anticipated delegitmation challenges, which can build up through the interventions of domestic parliaments in IO member states, courts, or coalitions of like-minded actors. In this inductive part of our research, we also develop hypotheses on the conditions that trigger the individual pathways and determine whether the pathways lead to comprehensive or limited provisions of protection.

Finally, we suggest that the rise of human rights protection in IOs indicates a step towards the international rule of law and the emergence of elements of a liberal, human-rights-based pattern of IO legitimation.

[6] See, for example, Kenneth R. Rutherford, 'The evolving arms control agenda: Implications of the role of NGOs in banning antipersonnel landmines', *World Politics*, 53:1 (2000), pp. 74–114; Nicole Deitelhoff, 'The discursive process of legalization: Charting islands of persuasion in the ICC case', *International Organization*, 63:1 (2009), pp. 33–65.

[7] But see Monika Heupel, 'With power comes responsibility: Human rights protection in United Nations sanctions policy', *European Journal of International Relations*, 19:4 (2013), pp. 771–95.

[8] For a detailed analysis of the cases, see Monika Heupel and Michael Zürn (eds), *Protecting the Individual from International Authority: Human Rights in International Organizations* (Cambridge: Cambridge University Press, 2017).

[9] Georg Simmerl and Michael Zürn, 'Internationale Autorität: Zwei Perspektiven', *Zeitschrift für Internationale Beziehungen*, 23:1 (2016), pp. 38–70.

[10] Andrew Bennett and Jeffrey T. Checkel, 'Process tracing: From philosophical roots to best practices', in Andrew Bennett and Jeffrey T. Checkel (eds), *Process Tracing: From Metaphor to Analytic Tool* (Cambridge: Cambridge University Press, 2015), p. 19.

The article is structured as follows. Sections II and III introduce the ALM and our conceptual framework. Section IV summarises the results of the empirical analysis. Section V presents the theoretical implications and sets out our conclusions.

The authority-legitimation mechanism (ALM)

IOs have, in operational terms, institutionalised authority when they are able to take decisions or develop interpretations that bind states or their societies, and these states accept this, even if compliance is not in their short-term interest.[11] This presupposes that states accept that IOs no longer take decisions or develop interpretations on the basis of unanimity. The institutionalised authority of IOs has grown significantly over time. If we compare today's IOs with those of three decades ago, it becomes evident that the former clearly display more delegated and pooled authority.[12] IOs sometimes directly regulate the behaviour of individuals and in that way exercise authority not only over states, but also over persons.[13] In this case, states then cease to be mediators between IOs and their citizens. UN sanctions, for example, were originally devised to alter the behaviour of states; today, the addressees of sanctions are often terror suspects, warlords, or dictators and their entourages, hence individuals.[14] Likewise, when the UN, the European Union (EU), or the North Atlantic Treaty Organization (NATO) assume government functions in transitional administrations, they enter into direct authority relationships with individuals. Furthermore, when the World Bank and the International Monetary Fund (IMF) sponsor projects and programmes whose substance they heavily influence and whose implementation they closely supervise, they come close to exercising authority over individuals.

These new facets of IO authority imply that IOs have, under certain circumstances, the capacity to violate the human rights of individuals.[15] UN sanctions led to a humanitarian disaster in Iraq when child mortality rose dramatically as a result of the shortage of food and medical supplies. UN and NATO peacekeepers sexually exploited women and children and facilitated human trafficking.[16] Projects funded by the World Bank have expelled indigenous people from their ancestral homelands

[11] Scott Cooper, Darren Hawkins, Wade Jacoby, and Daniel Nielson, 'Yielding sovereignty to international institutions: Bringing system structure back in', *International Studies Review*, 10:3 (2008), p. 505; Michael Zürn, Martin Binder, and Matthias Ecker-Ehrhardt, 'International authority and its politicization', *International Theory*, 4:1 (2012), pp. 69–106.

[12] See Liesbet Hooghe, Gary Marks, Tobias Lenz, Jeanine Bezuijen, Besir Ceka, and Svet Derderyan, *Measuring International Authority: A Postfunctionalist Theory of Governance, Volume III* (Oxford: Oxford University Press, 2017); Michael Zürn, Martin Binder, Alexandros Tokhi, Xaver Keller, and Autumn Lockwood Payton, 'The International Authority Data Project', paper presented at the International Authority Workshop, Berlin, 10–11 December 2015.

[13] Armin von Bogdandy et al. (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Heidelberg: Springer, 2010); Daniel Bodansky, 'Legitimacy in international law and international relations', in Dunoff and Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations*, pp. 321–41.

[14] Daniel W. Drezner, 'Sanctions sometimes smart: Targeted sanctions in theory and practice', *International Studies Review*, 13:1 (2011), pp. 96–108.

[15] Robert McCorquodale, 'International organisations and international human rights law: One giant leap for humankind', in Kaiyan H. Kaikobad and Michael Bohlander (eds), *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick* (Leiden: Martinus Nijhoff, 2009), pp. 141–62 (p. 142).

[16] Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge: Cambridge University Press, 2011).

without compensation and have resulted in massive environmental destruction. IMF-sponsored programmes have aggravated poverty in recipient countries that were compelled to cut social spending. The EU's Frontex agency has conducted pushbacks resulting in the violation of the right to asylum of refugees. The World Trade Organization's (WTO) TRIPS[17] agreement initially prohibited the selling of generic medicaments in developing countries, thus putting a heavy strain on their public health services.

The ALM posits that authoritative IOs lose legitimacy if they violate human rights. Originally, responsibility for the protection of human rights was ascribed to states. Today, IOs conceived as public authorities are also expected to ensure that their policies do not violate human rights. IOs can no longer disclaim responsibility and shift the blame to their member states if rights violations occur in connection with their policies.[18] The permissive consensus vis-à-vis IOs is over, IOs are politicised and can no longer take it for granted that they will be perceived as legitimate actors. Actors whose rights are violated by IOs, or by other actors on behalf of IOs, demand that IOs acknowledge their 'right to justification'.[19] In fact, human rights violations by IOs are challenged by different actors in different fora. The World Bank and the IMF experienced mass demonstrations in front of their headquarters. EU refugee policy is widely condemned by the media and CSOs. And NATO was sued by Serbia before the International Court of Justice for violating international humanitarian law in relation to the airstrikes during the Kosovo war.

According to the ALM, IOs increase their self-legitimation efforts when their legitimacy is challenged; the legitimacy of an organization is not stable but needs to be constantly cultivated through processes of legitimation.[20] If IOs confront a crisis of legitimacy, they take steps to (re)legitimate their claim to authority to make sure that they are once again recognised as legitimate wielders of authority. When IOs face allegations of human rights violations, they are expected to draw on a liberal narrative of legitimation. This narrative is based on legal accountability, the protection of individual rights, and legal equality. Accordingly, introducing provisions for the protection of the human rights of individuals affected by IO policies increases the perceived legitimacy of IOs. Focusing on procedures, the liberal pattern of legitimation is more demanding than the technocratic pattern, in which the emphasis is on output or the fulfilment of a mandate.[21] Yet, it is easier to achieve than the participatory pattern of legitimation, with its focus on the principle that all those affected by a decision should have a say in the decision and on democratic accountability.[22]

We can thus summarise the logic of the ALM and conceptualise the mechanism as a succession of interlinked steps: (1) IOs have experienced a rise in authority and increasingly take decisions that directly affect individuals, that way circumscribing states' role as mediators between IOs and their citizens or other individuals; (2) The increase in the authority of IOs has increased the likelihood that

[17] TRIPS stands for trade-related aspects of intellectual property rights.

[18] Andrew Clapham, *Human Rights Obligations of Non-State-Actors* (Oxford: Oxford University Press, 2006).

[19] Rainer Forst, *Das Recht auf Rechtfertigung: Elemente einer konstruktivistischen Theorie der Gerechtigkeit* (Frankfurt aM: Suhrkamp, 2007).

[20] David Beetham, *The Legitimation of Power* (Atlantic Highlands, NJ: Humanities Press International, 1991); Rodney Barker, *Legitimating Identities: The Self-Presentations of Rulers and Subjects* (Cambridge: Cambridge University Press, 2001); Dominik Zaum (ed.), *Legitimating International Organizations* (Oxford: Oxford University Press, 2013).

[21] Tamar Gutner and Alexander Thompson, 'The politics of IO performance: a framework', *The Review of International Organizations*, 5:3 (2010), pp. 227–48.

[22] Robert A. Dahl, *Democracy and its Critics* (New Haven, CT: Yale University Press, 1989).

IOs commit human rights violations; (3) If IOs violate human rights, legitimacy is withheld from them, provided that concerned actors find opportunities to express disapproval and form coalitions; (4) To (re)legitimate their claim to authority, IOs draw on the liberal pattern of legitimation and introduce provisions for the protection of human rights (Figure 1).

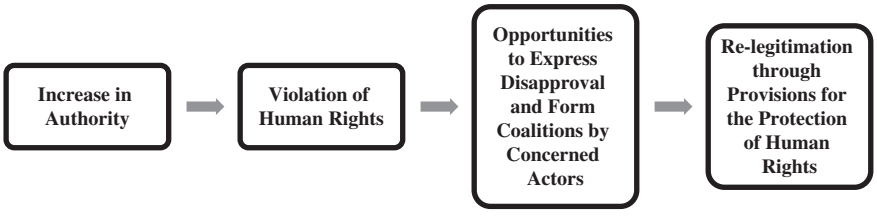

Figure 1. The authority-legitimation mechanism (ALM).

Conceptual framework

We first apply the method of comparative process tracing in order to test the ALM. This theory-testing use of process tracing implies that we are examining whether we can detect the mechanism's specified individual steps in one or several cases in which the mechanism's starting point and end-point are given – in our study ten cases in which IOs exercise authority and introduce provisions for the protection of human rights. In a second step, now following an inductive logic, we reconstruct different analytical pathways through which the ALM materialises.[23] In this step, we also investigate the variation in the quality of the protection provisions that emerge in different cases, employing the method of structured-focused comparison.[24] Each of the inductively identified pathways exemplifies the ALM and together they suggest equifinality. We thus combine different logics: we test the ALM, but inductively construct the different pathways.

Mechanisms and process tracing

Mechanisms are 'recurrent processes linking specified initial conditions and a specific outcome'.[25] They are thick chains of events, or reactive sequences, that map the distance between an independent and a dependent variable.[26] Unlike others, we do not assume that a mechanism follows only one logic of action, such as coercion, competition, or emulation.[27] Rather, we conceive of a mechanism as a pattern of sequences of action and reaction involving both strategic and deliberative practices.

[23] Frank Schimmelfennig, 'Efficient process tracing: Analyzing the causal mechanisms of European integration', in Bennett and Checkel (eds), *Process Tracing*, ch. 4; Derek Beach and Rasmus Brun Pedersen, *Process-Tracing Methods: Foundations and Guidelines* (Ann Arbor, MI: University of Michigan Press, 2013), pp. 14–15, 29–31, 102–3; Tim Büthe, 'Taking temporality seriously: Modeling history and the use of narratives as evidence', *American Political Science Review*, 96:3 (2002), pp. 481–93.

[24] Alexander L. George, 'Case studies and theory development: the method of structured, focused comparison', in Paul G. Lauren (ed.), *Diplomacy: New Approaches in History, Theory, and Policy* (London: Collier Macmillan, 1979), pp. 43–68; Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005), ch. 3.

[25] Renate Mayntz, 'Mechanisms in the analysis of social macro-phenomena', *Philosophy of the Social Sciences*, 34:2 (2004), p. 241.

[26] Bennett and Checkel (eds), *Process Tracing*.

[27] Beth A. Simmons, Frank Dobbin, and Geoffrey Garrett, *The Global Diffusion of Markets and Democracy* (Cambridge: Cambridge University Press, 2008); Tanja A. Börzel and Thomas Risse, 'From Europeanisation to diffusion: Introduction', *West European Politics*, 35:1 (2012), pp. 1–19.

To test the ALM, we use the method of process tracing. Process tracing denotes 'the analysis of evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or testing hypotheses about causal mechanisms that might causally explain the case'.[28] The method is particularly suitable for discovering interacting causal processes in the context of complex causality.[29]

Process tracing allows causal inferences to be drawn only if the researcher succeeds in reconstructing an uninterrupted causal story. We therefore draw on a variety of different empirical sources: primary documents produced by IOs and actors who interact with them, 70 semi-structured interviews conducted with IO officials, representatives of member states and CSOs, and secondary literature.

Pathways

We draw on the method of theory-building process tracing to expose a number of different causal pathways through which the ALM materialises.[30] These pathways share the general characteristics of mechanisms, but are more specific with regard to the actors that drive them, the strategies these actors apply, and the conditions on which these actors become engaged.

For the purpose of identifying these causal pathways, we assume that IO decision-makers face different modes of input from within and without the IO, namely reform proposals, arguing, shaming, defiance, coercion, and litigation. We also assume that there are different modes of reaction to that input on the part of IOs: IOs first start a reflection process before they opt for either defensive behaviour (ignoring, denial, immunisation, diversionary behaviour) or institutional change. To get from the identified modes of input and reaction to a specific pathway, we examine what sequence of input and IO reaction connects the human rights violation with the creation of human rights safeguards in IOs. We also assess what input by which actor has been the most important.[31]

Human rights protection provisions in IOs

According to the ALM, all pathways are expected to lead to the development of some human rights protection provisions in IOs. Yet, the provisions vary across IOs. Human rights protection provisions in IOs may include prevention and complaints provisions, that is, provisions that prevent human rights violations in the first place and provisions that enable complaints to be made by aggrieved individuals.[32] To assess the quality of human rights safeguards in IOs we developed six criteria for each type of provision. Each criterion is assigned the value 0, 1, or 2, depending on the extent to which it is fulfilled.

[28] Bennett and Checkel (eds), *Process Tracing*.
[29] George and Bennett, *Case Studies and Theory Development*, p. 212.
[30] See Beach and Pedersen, *Process-Tracing Methods*, pp. 16–18.
[31] For more information on how we identify pathways, see Monika Heupel and Gisela Hirschmann, 'Conceptual framework', in Heupel and Zürn (eds), *Protecting the Individual from International Authority*, pp. 40–65.
[32] See also Ruth W. Grant and Robert O. Keohane, 'Accountability and abuses of power in world politics', *American Political Science Review*, 99:1 (2005), pp. 29–43; Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, 'The emergence of global administrative law', *Law and Contemporary Problems*, 68:3 (2005), pp. 15–61.

To assess the quality of IOs' *prevention provisions*, we rely on the following criteria: obligation, precision, scope, addressee, compliance management, and mainstreaming. Obligation and precision refer to the degree of bindingness and clarity, respectively, of the provisions. Scope relates to their substantive breadth. Addressee refers to the actor to whom the provisions apply. Compliance management corresponds to the managerial arrangements to guarantee implementation of the provisions. Mainstreaming refers to the question of whether the provisions apply to all or only some applications of the policy.

To assess the quality of IOs' *complaints provisions*, the criteria we use are: delegation, obligation, complainant, accessibility, remedy, and mainstreaming. Delegation refers to the extent to which an independent body exists that has the competence to adjudicate on complaints. Obligations relates to the degree of bindingness of the decisions on complaints. Complainant refers to the question of whether aggrieved individuals themselves or only third parties can file an action. Accessibility corresponds to the 'user-friendliness' of the complaints mechanism. As above, mainstreaming refers to the question of whether the provisions apply to all or only some policy applications.

We trace the evolution of human rights safeguards in each IO starting from the year in which the safeguards were first established and ending in 2012. For each year, we create an aggregate value between 0 and 2. We label provisions with an aggregate value between 0.5 and 1.0 'limited protection provisions', and provisions with an aggregate value above 1.0 'comprehensive protection provisions'. To create the aggregate values, we first assess separately the annual values of the prevention and complaints provisions. We then create the overall annual values by aggregating the values for prevention and complaints.[33]

Trigger and success conditions

The initiation of the pathways to human rights protection in IOs and their quality depend on specific conditions relating to the features of the IOs, their environments and the human rights violations they have perpetrated. To generate hypotheses on the trigger and success conditions of different pathways related to the ALM, in each case study we ask why a specific pathway has been activated and why it led to limited or comprehensive protection provisions.

To guide this inductive part of our empirical analysis, we assume that the trigger and success conditions of the pathways are likely to be related to the following four aspects: first, the fact that the IO disposes of an organisational culture that facilitates learning. This type of organisational culture is typically associated with a flat decision-making process[34] and boundary-spanning units that transfer expertise from outside the IO into the IO.[35] Second, the vulnerability of an IO to pressure. An IO may be vulnerable if the human rights violations are likely to generate a powerful campaign[36]

[33] The coding was done by Monika Heupel (five case studies), Gisela Hirschmann (four case studies), and Theresa Reinold (one case study). A more detailed description of the operationalisation of the dependent variable and the aggregation rules is provided in Appendix I.

[34] John Child and Sally J. Heavens, 'The social constitution of organizations and its implications for organizational learning', in Meinolf Dierkes, Ariane B. Antal, John Child, and Ikujiro Nonaka (eds), *Handbook of Organizational Learning and Knowledge* (New York: Oxford University Press, 2003), pp. 308–26.

[35] Howard Aldrich and Diane Herker, 'Boundary spanning roles and organization structure', *The Academy of Management Review*, 2:2 (1977), pp. 217–30.

[36] Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), pp. 27–8.

and if its identity makes it an easy target for such a campaign.[37] IOs may also be vulnerable if the rights violation is considered justiciable and if human rights safeguards entail no costs for the actors that propagate them. Third, the power of the actors who demand rights protection. Domestic parliaments are powerful, for instance, if they are independent from the executive and if they are positioned in a strong IO member state. Courts can be powerful actors if they have jurisdiction over the IO or important member states. Finally, IOs may be more likely to establish human rights protection provisions if there are role models they can follow. IOs can learn from each other[38] or from domestic models among their member states.

Case selection

To test the ALM, we selected cases that exhibit the mechanism's first (IO with authority) and last (human rights protection provisions in IO) component. We test whether the cases display the expected sequence in between, and we explore via which pathways the mechanism unfolds. We selected ten cases, establishing something that can be labelled a comparative process-tracing approach.

This approach comes with costs for the second step in our research design – inductively identifying the trigger and success conditions for the different pathways. From this perspective, we have made our selection on the basis of the dependent variable. To arrive at generalisable findings and increase the probability of discovering different pathways, the selected IOs that cover different issue areas, execute different policies, and commit different types of rights violations. To discover the success conditions of the pathways, the sample includes cases in which IOs have created limited protection provisions only and cases in which IOs have proceeded to comprehensive protection provisions. Finally, our research design is based on five pairwise comparisons to lessen the drawbacks of selecting on the dependent variable. In three comparisons we juxtapose pairs of cases in which IOs have committed the same rights violations, but established different safeguards, namely either limited or comprehensive ones. This allows us to examine the conditions that determine the different quality of the safeguards, while keeping the effect of confounding variables to a minimum. In the two remaining comparisons, we match pairs of cases in which IOs have developed provisions of the same quality in relation to the same rights violations. These comparisons are intended to examine the conditions that activate different pathways, again minimising the effect of confounding variables.

On the basis of these considerations we selected the following cases for analysis: four case studies of UN and EU sanctions policy – two that trace the evolution of provisions in these two IOs designed to eliminate the violation of subsistence rights connected with comprehensive trade embargoes, and two that reconstruct the development of provisions for the protection of due process rights for blacklisted individuals; four case studies dealing with UN and NATO peacekeeping – two that analyse the evolution of provisions to prevent sexual exploitation and/or human trafficking by IO personnel and provide avenues for complaints and two that trace the emergence of provisions in the two organisations to protect the due process rights of detainees; and, finally, two case studies on World Bank and IMF lending that analyse the development of provisions for the protection of subsistence and, in the case of the World Bank, cultural rights (Table 1).

[37] Frank Schimmelfennig, *The EU, NATO, and the Integration of Europe: Rules and Rhetoric* (Cambridge: Cambridge University Press, 2003).

[38] Thomas Gehring and Sebastian Oberthür, 'The causal mechanisms of interaction between international institutions', *European Journal of International Relations*, 15:1 (2009), pp. 132–5.

Table 1. Cases.

Policy	IO	Human Rights Violation	Quality of Human Rights Protection Provisions
Sanctions	UN	Subsistence rights	Limited
	EU	Subsistence rights	Limited
	UN	Due process rights	Comprehensive
	EU	Due process rights	Comprehensive
Peacekeeping	UN	Bodily integrity rights and right not to be subjected to inhuman or degrading treatment	Comprehensive
	NATO	Bodily integrity rights and right not to be enslaved	Limited
	UN	Due process rights	Comprehensive
	NATO	Due process rights	Limited
Lending	World Bank	Subsistence and cultural rights	Comprehensive
	IMF	Subsistence rights	Limited

Results

The growth of human rights protection in IOs

In each of the ten cases we analysed, IOs arranged for provisions to eliminate, or at least minimise, the violation of human rights related to their policies (prevention provisions). In some cases, IOs introduced additional provisions that enable aggrieved individuals to hold them accountable (complaints provisions). Overall, the protection provisions that emerged in the different cases differ in their quality. In five cases IOs established comprehensive protection provisions, namely with values between 1.21 and 1.84 points. In the other five cases, only limited protection provisions emerged that reached values between 0.63 and 0.92 points (Figure 2).[39]

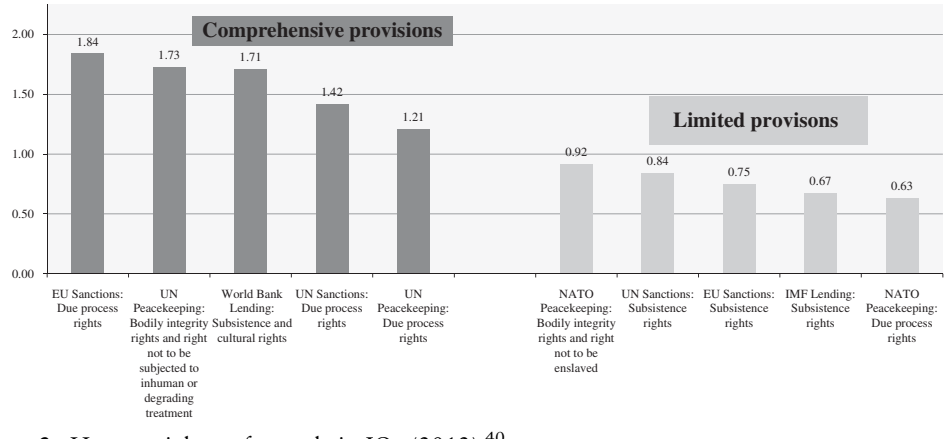

Figure 2. Human rights safeguards in IOs (2012).[40]

Comprehensive protection provisions were institutionalised in the two UN peacekeeping cases. In the case of sexual exploitation and abuse by UN peacekeepers, the UN Secretariat introduced regulations governing how mission personnel were to behave, and developed mandatory training modules.[41]

[39] Information on the composition of the values and evolution over time is provided in Appendix II.
[40] For detailed case-specific information, see Heupel and Zürn (eds), *Protecting the Individual*.
[41] UN Secretary-General, UN doc. ST/SGB/2003/13, 'Special Measures for Protection from Sexual Exploitation and Sexual Abuse' (9 October 2003).

Complaints and investigation provisions in the form of Conduct and Discipline Units were established in the Secretariat and in the field (1.73 points).[42] In the case of the violation of detainees' due process rights in peace operations, the UN Secretary-General issued a regulation that bound the treatment of detainees to the standards established by the Geneva Conventions and customary international law.[43] In the UN operation in Kosovo, a detention review panel and an ombudsperson institution were created to which detainees could address their complaints (1.21).[44]

Comprehensive provisions were also established in the cases involving due process violations in UN and EU sanctions policy. The UN Security Council has granted blacklisted individuals the right to know the reasons for their listing.[45] It has also appointed an ombudsperson to take complaints by listed terror suspects and advise the Security Council on individuals to be delisted from the sanctions regime (1.42). [46] The EU has also granted individuals the right to know the reasons for being listed in a sanctions regime. Moreover, individuals listed in an EU sanctions regime can appeal to the European Court of Justice (ECJ) against their listing (1.84).[47] Finally, comprehensive protection provisions emerged in the World Bank, which introduced social and environmental standards to guide the design and implementation of the projects for which it provided funding.[48] It also created the Inspection Panel to which individuals can direct their complaints if the Bank fails to respect its safeguards (1.73).[49]

Limited provisions for the protection of human rights were introduced by the UN and the EU with regard to protecting the subsistence rights of individuals affected by their sanctions regimes. Both IOs have committed themselves to adopting targeted sanctions instead of sweeping trade embargoes.[50] Moreover, both organisations grant humanitarian exemptions and require an assessment of the humanitarian impact of their sanctions (0.84 and 0.75 for the UN and the EU, respectively).[51]

[42] See the website of the Conduct and Discipline Unit, available at: {https://conduct.unmissions.org} accessed 5 April 2017.

[43] UN Secretary-General, UN doc. ST/SGB 1999/13, 'Secretary-General's Bulletin on the "Observance by United Nations Forces of International Humanitarian Law"' (6 August 1999).

[44] United Nations Mission in Kosovo (UNMIK), UN doc. UNMIK/REG/2000/38, 'Regulation 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo' (30 June 2000); UNMIK, UN doc. UNMIK/REG/2001/18, 'Regulation on the Establishment of a Detention Review Commission for Extra-Judicial Detentions based on Executive Orders' (25 August 2001).

[45] See, for example, UN Security Council Res. 1822 (2008).

[46] See, for example, UN Security Council Res. 1989 (2011).

[47] See, for example, Council of the EU, 7697/07, 'European Union Autonomous/Additional Restrictive Measures (Sanctions) – Recommendations for Dealing with Country-Specific EU Autonomous Sanctions or EU Additions to UN Sanctions Lists' (3 April 2007), available at: {http://register.consilium.europa.eu/pdf/en/07/st07/st07697.en07.pdf} accessed 1 November 2015.

[48] World Bank, 'Environmental Assessment Sourcebook, Vol. I: Policies, Procedures and Cross-Sectoral Issues' (1991), available at: {http://elibrary.worldbank.org/doi/pdf/10.1596/0-8213-1843-8} accessed 23 March 2017.

[49] IBRD and IDA, 'The World Bank Inspection Panel', Resolution No. IBRD 93–10, Resolution IDA 93–6 (22 September 1993), available at: {http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf} accessed 21 October 2015.

[50] See, for example, Council of the EU, 10198/1/04 REV1, 'Basic Principles on the Use of Restrictive Measures (Sanctions)' (7 June 2004), available at: {http://register.consilium.europa.eu/pdf/en/04/st10/st10198-re01.en04.pdf} accessed 2 October 2013.

[51] See, for example, Informal Working Group of the Security Council on General Issues of Sanctions, Non-paper/Rev 10, 'Chairman's Proposed Outcome' (26 September 2002), available at: {http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sanc%20Chair%20Prop%20Outcome.pdf} accessed 9 January 2017.

Furthermore, limited provisions were established by NATO to prevent human rights violations in peacekeeping operations. To prevent NATO peacekeepers from being involved in human trafficking and sexual exploitation, NATO introduced a code of conduct and training modules (0.92).[52] As for the treatment of detainees, NATO introduced guidelines and a review panel for its Kosovo operation (0.63).[53] Lastly, the IMF created limited provisions to mitigate the negative impact on human rights of its lending policy. With its Poverty and Social Impact Analysis (PSIA), the organisation established at least some standards for evaluating the social impact of IMF-funded projects (0.67).[54]

The ALM, its pathways, and related conditions

The ALM holds that IOs, which, during the course of exercising authority over individuals, violate human rights, must introduce human rights safeguards when the legitimacy of their claim to authority is challenged. The ALM can be observed in nine of our ten cases: the UN and the EU created safeguards for the protection of due process rights in their sanctions policies when they faced a legitimacy problem; similarly, the UN's establishment of provisions to protect the subsistence rights of individuals affected by its sanctions was also a response to efforts at delegitimation. The UN and NATO introduced human rights safeguards for their peacekeeping operations after having been confronted with widespread allegations of human rights violations. And the World Bank and the IMF agreed to introduce provisions for the protection of human rights in response to accusations that the projects and programmes that received their funding gave rise to human rights violations, thus challenging their legitimacy. In one case, the ALM could not be confirmed: the EU established provisions for the protection of subsistence rights in its sanctions policy without being under pressure. This response followed allegations made against the UN, however; the EU wanted to avoid the same fate.

In line with the notion of equifinality, the ALM materialises in the form of different pathways. Based on the input–reaction scheme introduced in Section III we have inductively identified three pathways that differ in terms of who is the most important actor pushing the reform process and what strategy that actor applies. We have named these pathways legislative, judicial, and like-minded institution-building, indicating the pathways' key actors and strategies. In the EU case study just mentioned we discovered a pathway that deviates from the ALM inasmuch as the IO introduced human rights safeguards without having either violated human rights or faced a challenge to its legitimacy; as we show below, the case nevertheless provides indirect support to the ALM. In this section, we outline the four pathways identified in our ten cases and formulate insights on the trigger and success conditions of each pathway.

Legislative institution-building. In this pathway, parliaments in democratic member states significantly influence the development of human rights protection provisions in IOs. The pathway is rooted in liberal foreign policy theory, which attributes a key influence on foreign policy in

[52] NATO, EAPC doc. EAPC(C)D(2004)0029, 'Policy on Combating Trafficking in Human Beings' (8 June 2004); NATO, EAPC doc. EAPC(C)D(2004)0029, 'Policy on Combating Trafficking in Human Beings' (8 June 2004), Appendix 2.

[53] COMKFOR Directive 42 of 9 October 2001, reprinted in Amnesty International, 'Federal Republic of Yugoslavia (Kosovo): International officials flout international law', AI Index: EUR 70/008/2002 (1 September 2002).

[54] Robert Gillingham (ed.), *Poverty and Social Impact Analysis by the IMF: Review Methodology and Selected Evidence* (Washington, DC: International Monetary Fund, 2008).

democratic states to domestic actors.[55] The parliament is the main organ through which individuals, interest groups and CSOs can channel their demands. While parliaments are often portrayed as obstacles to the implementation of international agreements, the promotion of human rights in foreign policy can actually profit from parliaments' influence on the executive.[56] With regard to the establishment of human rights protection provisions in IOs, the pathway legislative institution-building comes in two variants. In the direct variant, a parliament tries to promote human rights safeguards in IOs by passing laws that bind the executive, or by refusing to ratify a treaty or allocate funding unless its demands are met. In the more indirect variant, a parliament impacts on the executive's foreign policy by conducting investigations, agenda setting, and shaping the domestic discourse.[57]

The direct form of this pathway occurred in the World Bank case. The Bank's introduction of safeguards and of the Inspection Panel was heavily influenced by the United States (US) Congress making the allocation of government funds to the Bank dependent upon such reforms. Congress had been mobilised before by CSO campaigns that exposed the negative social and ecological impact of World Bank projects. In response to Congress's actions, the US Executive Director at the World Bank convinced other Executive Directors and the management to agree to reforms.[58] The indirect form of this pathway is evident in the case study on the emergence of protection provisions in NATO following peacekeepers' involvement in human trafficking and sexual exploitation. The US and Norwegian ambassadors to NATO introduced these provisions against the background of investigations by the US Congress into reports of misconduct by US troops in Korea and the Balkans. In reaction to these allegations, President Bush had introduced a 'zero-tolerance policy' regarding human trafficking in peace operations.[59] Following this model, the two ambassadors managed to persuade the other NATO members to adopt the 'NATO Policy on Combating Human Trafficking'.[60]

The cases also provide insights into the conditions that trigger the pathway legislative institution-building. First, the pathway seems to require a substantial degree of autonomy for the parliament

[55] See, for example, Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca, NY: Cornell University Press, 1998); Corinna Freund and Volker Rittberger, 'Utilitarian-liberal foreign policy theory', in Volker Rittberger (ed.), *German Foreign Policy since Unification: Theories and Case Studies* (Manchester: Manchester University Press, 2001), pp. 68–104.

[56] David P. Forsythe, *Human Rights and U.S. Foreign Policy: Congress Reconsidered* (Gainesville, FL: University Press of Florida, 1988); Andreas Hasenclever, *Die Macht der Moral in der internationalen Politik: Militärische Interventionen westlicher Staaten in Somalia, Ruanda und Bosnien-Herzegowina* (Frankfurt aM: Campus, 2001).

[57] James M. Scott, 'In the loop: Congressional influence in American foreign policy', *Journal of Political and Military Sociology*, 25:1 (1997), pp. 47–75.

[58] Robert H. Wade, 'Greening the Bank: the struggle over the environment, 1970–1995', in Devesh Kapur, John P. Lewis, and Richard C. Webb (eds), *The World Bank: Its First Half Century* (Washington, DC: Brookings Institution Press, 1997), pp. 611–734; Lori Udall, 'The World Bank and public accountability: Has anything changed?', in Jonathan Fox and L. D. Brown (eds), *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements* (Cambridge, MA: MIT Press, 2000), pp. 391–436; Susan Park, *World Bank Group Interactions with Environmentalists: Changing International Organisation Identities* (Manchester: Manchester University Press, 2010).

[59] The White House, 'National Security Presidential Directive NSPD-22', Washington, DC (16 December 2002), available at: {http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf} accessed 1 November 2015.

[60] NATO, EAPC doc. EAPC(C)D(2004)0029, 'Policy on Combating Trafficking in Human Beings' (8 June 2004).

in question vis-à-vis the executive, as is the case in presidential systems in particular. In both instances, the US Congress was able to further the adoption of human rights protection provisions in IOs thanks to its considerable independence from the executive, whether in terms of its formal competences or its informal powers – which parliaments in parliamentary systems normally lack.[61] Second, the pathway was in both cases facilitated by the existence of comparable human rights protection provisions at the domestic level in the state whose parliament became engaged. In fact, the reforms adopted by the World Bank and NATO were inspired by domestic scripts; namely, US legislation on social and environmental standards for unilateral US development lending and legislation on the prohibition of sexual exploitation by US and Norwegian military staff in the two countries.[62]

Finally, the two cases indicate the success conditions for the pathway legislative institution-building, that is, the conditions under which the pathway leads to comprehensive rather than limited protection provisions. One condition of success seems to be that the parliament is located in a powerful IO member state. This is in line with rational institutionalism, but also with hegemonic law-making theories, which assume that IOs are shaped by the interests of their dominant member states.[63] The cases also suggest that comprehensive provisions only emerge if they do not entail sovereignty costs for the state the parliament represents. The US pushed for ambitious regulations in the World Bank as these applied only to Bank staff and borrowing states[64] while, with regard to NATO, the US promoted only limited provisions as these also bound the actions of US soldiers in NATO operations.[65] This ambivalence corresponds to the assumptions of delegation theories regarding the interaction of dominant member states with IOs in general[66] and US human rights policy more specifically.[67]

Judicial institution-building. This pathway implies that the decisive input leading to the adoption of human rights protection provisions in IOs is provided by higher courts. These courts can engage in law-making at the expense of the autonomy of the legislature and the executive,[68] either for the purpose of filling legal gaps through specification or by judicial activism. The latter is regarded as

[61] For the formal and informal competences of the US Congress in general, see Scott, 'In the loop', p. 49.

[62] See, for example, Operations Evaluation Department, 'OED Review of the World Bank's Performance on the Environment', Washington, DC (2001), p. 3, available at: {http://documents.worldbank.org/curated/en/2001/06/1490093/oed-review-banks-performance-environment}; The White House, 'National Security Presidential Directive'.

[63] G. J. Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton, NJ: Princeton University Press, 2001); Nico Krisch, 'International law in times of hegemony: Unequal power and the shaping of the international legal order', *European Journal of International Law*, 16:3 (2005), pp. 369–408; Michael Zürn, 'Jenseits der Anarchie: Autorität und Herrschaft in der Global Governance', *Politische Vierteljahresschrift*, 56:2 (2015), pp. 319–33.

[64] See Jonathan A. Fox and David L. Brown, 'Introduction', in Fox and Brown (eds), *The Struggle for Accountability*, p. 15.

[65] For US reservations regarding external jurisdiction over peacekeepers, see Marten Zwanenburg, 'The statute for an international criminal court and the United States: Peacekeepers under fire?', *European Journal of International Law*, 10 (1999), pp. 124–43.

[66] Abbott and Snidal, 'Hard and soft law'; Darren G. Hawkins, David A. Lake, Daniel L. Nielson, and Michael J. Tierney (eds), *Delegation and Agency in International Organizations* (Cambridge: Cambridge University Press, 2006).

[67] Andrew Moravcsik, 'The paradox of U.S. human rights policy', in Michael Ignatieff (ed.), *American Exceptionalism and Human Rights* (Princeton, NJ: Princeton University Press, 2005), pp. 147–97.

[68] See, for example, Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000).

more controversial since it involves judges deliberately using their role as interpreters of the law to transform existing legislation.[69] The very nature of law empowers judges as it needs to be interpreted, applied to specific contexts and evaluated with regard to potential conflicts of norms.[70] At the same time, however, judges depend on plaintiffs putting forward cases and on member states accepting their authority. Thus, while states increasingly delegate far-reaching competences to autonomous courts, thereby increasing the autonomy of judges,[71] judges at the same time need to be careful not to permanently disregard the interests of powerful member states.[72] If judges go too far, IO staff or member states that do not accept the courts' judgements can protract or circumvent their implementation.[73]

This pathway occurred in the case of the protection of due process rights in EU sanctions policy. Terror suspects blacklisted by the EU filed complaints to national courts and to the ECJ, claiming that their due process rights were being violated by the EU. In a landmark decision in 2006, the court annulled the sanctions against a complaining party[74] and, as a consequence, the Council of the EU reformed its listing and delisting procedures.[75] Further protection provisions were institutionalised as more and more lawsuits brought before the ECJ were decided against the EU.[76] The due process protection provisions that evolved in UN sanctions policy also resulted from the pathway. In this case, affected individuals also filed complaints before national courts and the ECJ, challenging the implementation of UN sanctions in EU member states. In response to the ECJ's famous Kadi decision[77] and related judgements, in which the court ruled that UN sanctions violated fundamental rights as guaranteed by EU law, the UN Security Council significantly improved its listing and delisting procedures.[78]

The two cases indicate that the pathway of judicial institution-building is only triggered if a right that is considered to be justiciable is violated – in both cases a civil right, namely the right to due process,

[69] See, for example, Jared Wessel, 'Judicial policymaking at the International Criminal Court: an institutional guide to analyzing international adjudication', *Columbia Journal of Transnational Law*, 44:2 (2006), pp. 377–452; Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard: Harvard University Press, 2004).

[70] Martin Shapiro, *Courts: A Comparative and Political Analysis* (Chicago: University of Chicago Press, 1981).

[71] Karen J. Alter, 'Agents or trustees? International courts in their political context', *European Journal of International Relations*, 14:1 (2008), pp. 33–63.

[72] Tom Ginsburg, 'International Judicial Lawmaking', Law and Economics Working Paper No. 26 (Urbana-Champaign, IL: University of Illinois, 2005).

[73] Monika Heupel, 'Judicial policymaking in the EU Courts: Safeguarding due process in EU sanctions policy against terror suspects', *European Journal on Criminal Policy and Research*, 18:4 (2012), pp. 311–27 [Special Issue, 'European Anti-Terror Policies Ten Years after 9/11', eds Donatella Della Porta and Lasse Lindekilde].

[74] Court of First Instance, *Organisation des Modjahedines du Peuple d'Iran v. Council of the European Union* [2006] ECR II-4665, 12 December 2006.

[75] Elspeth Guild, 'The uses and abuses of counter-terrorism policies in Europe: the case of the "terrorist lists"', *Journal of Common Market Studies*, 46:1 (2008), p. 189.

[76] Mikael Eriksson, *In Search of a Due Process: Listing and Delisting Practices in the European Union* (Uppsala: Department of Peace and Conflict Research, Uppsala University, 2009), pp. 22, 32.

[77] European Court of Justice, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council and Commission*, Joined Cases C-402/05 P and C-415/05 P, ECR I-6351, 3 September 2008.

[78] Iain Cameron, EXPO/B/DROI/2007/34 OCT, 'Respecting Human Rights and Fundamental Freedoms and EU/UN Sanctions: State of Play', Study commissioned by the European Parliament, Directorate-General for External Policies of the Union (7 October 2008), available at: {www.europarl.europa.eu/RegData/etudes/etudes/join/2008/385542/EXPO-DROI_ET%282008%29385542_EN.pdf} accessed 8 October 2015.

which is regarded as enforceable by a court and which has been regularly enforced by courts in the past. Unlike civil and political rights, social and economic rights are generally not regarded to be justiciable, nor is there a tradition of legal enforcement.[79]

Regarding the achievement of comprehensive protection provisions, the cases suggest that it makes a difference if the activated court is a strong one. This is the case whether the state, or the community of states, over which the court has jurisdiction is a key player within the IO, as in the UN case, or if the court has jurisdiction over the IO as a whole, as in the EU case. This resonates with the observation that the ECJ has become a powerful court when it comes to protecting individual rights vis-à-vis the EU. The high reputation of the court increases compliance with its decisions, which has made strategic litigation before the ECJ a promising instrument for enforcing comprehensive human rights protection provisions not only in the EU but also, indirectly, in other IOs.[80]

Like-minded institution-building. This pathway is characterised by decisive input from a coalition of norm entrepreneurs within and outside the IO. These actors shame the IO for its human rights violations and put forward reform proposals. While the term 'like-minded' is usually employed to describe a coalition of CSOs and states that pursue a common agenda,[81] we use this concept to describe actors who possess neither core institutional power resources within the IO, nor are executives from powerful member states. These actors can form part of a coherent and sustained social movement, or their cooperation can be looser and less durable.[82] Like-minded actors organise powerful transnational campaigns to increase moral pressure on the IO in order to make it introduce protection provisions.[83] Through framing[84] and persuasion,[85] they expose the discrepancy between the IO's actions and existing norms to national and transnational publics and provide arguments for reform.

This pathway can be identified in five of the ten cases in our study, three of them in the area of peacekeeping. In the case of sexual abuse by UN peacekeepers, numerous reports by

[79] Aoife Nolan, Bruce Porter, and Malcolm Langford, 'The Justiciability of Social and Economic Rights: An Updated Appraisal', NYU School of Law Center for Human Rights and Global Justice Working Paper No. 15/2007 (New York: New York University, 2007).

[80] Walter Mattli and Anne-Marie Slaughter, 'Revisiting the European Court of Justice', *International Organization*, 52:1 (1998), pp. 177–209; Jonas Tallberg, 'Supranational influence in EU enforcement: the ECJ and the principle of state liability', *Journal of European Public Policy*, 7:1 (2000), pp. 104–21; August Reinisch, *International Organizations before National Courts* (Cambridge: Cambridge University Press, 2000).

[81] Alex Warleigh, '"Europeanizing" civil society: NGOs as agents of political socialization', *Journal of Common Market Studies*, 39:4 (2001), p. 629; Andrew F. Cooper, 'Like-minded nations, NGOs and the changing pattern of diplomacy within the UN system: an introductory perspective', in Andrew F. Cooper, John English, and Ramesh C. Thakur (eds), *Enhancing Global Governance: Towards a New Diplomacy?* (Tokyo: United Nations University Press, 2002), pp. 1–18.

[82] Sidney G. Tarrow, *Power in Movement: Social Movements and Contentious Politics* (3rd edn, Cambridge: Cambridge University Press, 2011).

[83] Margaret E. Keck and Kathryn Sikkink, 'Transnational advocacy networks in international and regional politics', *International Social Science Journal*, 51:159 (1999), p. 97.

[84] Amos Tversky and Daniel Kahneman, 'The framing of decisions and the psychology of choice', *Science*, 211:4481 (1981), pp. 453–8.

[85] Thomas Risse and Kathryn Sikkink, 'The socialization of international human rights norms into domestic practices: Introduction', in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), pp. 1–38.

non-governmental organisations (NGOs) and international media, as well as reform proposals put forward by the UN Secretariat, led to the adoption of protection provisions by UN intergovernmental bodies.[86] Similarly, the protection provisions regarding the violation of due process rights in UN detention evolved in response to criticism and reform proposals by NGOs and regional organisations.[87] In the case of the violation of due process rights in NATO detentions, criticism and reform proposals came from local and transnational NGOs as well as regional intergovernmental organisations, which prompted the organisation to adopt at least limited protection provisions.[88]

Two further cases in which the ALM unfolded via the pathway are that of subsistence rights violations in UN sanctions policy and of IMF lending. In the UN sanctions case, NGOs and humanitarian UN agencies organised a powerful campaign targeting the disastrous UN sanctions regime against Iraq, which had provoked massive suffering among the Iraqi population.[89] At the same time, a coalition of middle powers and academics joined forces and developed recommendations, which eventually led the Security Council to introduce at least limited protection provisions.[90] Likewise, in the case of the IMF, public campaigns as well as recommendations by the IMF's own Independent Evaluation Office disposed the organisation to adopt at least limited provisions to minimise the human suffering that its structural adjustment programmes in particular caused in recipient countries.[91]

The cases suggest that the pathway like-minded institution-building can be activated if there is a structure of political opportunity that facilitates a powerful campaign. This implies that the human rights violations can be made visible, either because innocent victims' physical harm can be portrayed visually in campaigns, or because a short causal chain between the violating IO and

[86] Save the Children UK, 'Note for Implementing and Operational Partners by UNHCR and Save the Children UK on Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone Based on Initial Findings and Recommendations from Assessment Mission 22 October–30 November 2001' (2002), available at: {http://www.savethechildren.org.uk/sites/default/files/docs/sexual_violence_and_exploitation_1.pdf}; UN General Assembly, UN doc. A/59/710, 'A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations [the "Zeid Report"]' (24 March 2005).

[87] See, for example, Amnesty International, AI Index: IOR 40/01/94, 'Peace-keeping and Human Rights' (January 1994), available at: {https://www.amnesty.org/en/documents/IOR40/001/1994/en/}; Council of Europe, CommDH(2002)11, 'Kosovo: The Human Rights Situation and the Fate of Persons Displaced From their Homes: Report by Alvaro Gil-Robles, Commissioner for Human Rights for the Attention of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe' (2002), available at: {https://wcd.coe.int/ViewDoc.jsp?id=982119&-Site=COE}.

[88] Amnesty International, AI Index: EUR 05/002/2004, 'The Apparent Lack of Accountability of International Peacekeeping Forces in Kosovo and Bosnia-Herzegovina' (April 2004), available at: {http://www.amnesty.org/en/library/info/EUR05/002/2004/en}; OSCE, 'Review of the Criminal Justice System (September 2001–February 2002)', OSCE Mission in Kosovo, Department of Human Rights and Rule of Law (2002), available at: {http://www.osce.org/kosovo/13043}.

[89] See, for example, John Mueller and Karl Mueller, 'Sanctions of mass destruction', *Foreign Affairs*, 78 (1999), pp. 43–52.

[90] The Watson Institute, 'Targeted Financial Sanctions: A Manual for Design and Implementation: Contributions from the Interlaken Process', Providence, RI (2001), available at: {http://www.watsoninstitute.org/tfs/TFS.pdf}; UN Security Council, S/2005/841, 'Note by the President of the Security Council' (2005).

[91] IMF, 'Evaluation Report: Fiscal Adjustment in IMF-Supported Programs: Report by the Independent Evaluation Office' (2003), pp. 8–9, available at: {http://www.imf.org/external/np/ieo/2003/fis/}.

the victims can be constructed.[92] In all five cases, at least one criterion was given. In the case of sexual exploitation in UN peacekeeping, it was possible to generate both empathy with the victims and a short causal chain designating blue-helmets as the perpetrators.[93] In the cases of violation of due process rights in UN and NATO detention, empathy with the victims, who were suspected terrorists, was more difficult to establish. Instead, campaigners successfully focused on attributing the responsibility for the violations to the international authorities in charge of the detainees.[94] In the cases of violation of subsistence rights in UN sanctions policy and IMF lending, the causal chain was rather diffuse. Instead, campaigners resorted to portraying the physical harm innocent victims incurred.[95]

The cases also provide hints on the conditions for success under which the pathway leads to comprehensive protection provisions. Mobilisation seems to be successful only if the IO is vulnerable to human rights campaigns[96] and displays an organisational culture that is conducive to learning.[97] In the two UN peacekeeping cases, the Secretariat was vulnerable to human rights campaigns because the organisation's identity was strongly imbued with the protection of human rights.[98] Moreover, the UN Secretariat's organisational culture was open and receptive to external knowledge. As a consequence, the campaigns and recommendations fell on good soil and led to the adoption of comprehensive provisions.[99] In the other cases, none or only one of these criteria was given. In the case of UN sanctions, the Security Council was vulnerable to human rights campaigns, yet its organisational culture was not particularly open to learning.[100] In the cases of NATO and the IMF, the organisations were less vulnerable as their mandates focused on military and economic or financial aspects. Moreover, their organisational culture was rather closed and hierarchical, therefore not conducive to learning.[101] As a consequence, in the latter four cases only limited protection provisions evolved.

Anticipatory institution-building. Finally, we discovered a pathway through which an IO establishes human rights safeguards, even if there is no direct pressure for such reforms. We call this pathway anticipatory institution-building. This pathway may be based on internal lesson-drawing

[92] Keck and Sikkink, *Activists Beyond Borders*, p. 27.

[93] Barbara Crossette, 'When peacekeepers turn into troublemakers', *The New York Times* (7 January 1996), available at: {www.nytimes.com/1996/01/07/weekinreview/the-world-when-peacekeepers-turn-into-trouble-makers.html} accessed 16 October 2015.

[94] Amnesty International, 'The Apparent Lack of Accountability'.

[95] Richard Roth and Rula Amin, 'Sanctions send Iraq on downward spiral', *CNN* (12 July 1999), available at: {http://edition.cnn.com/WORLD/meast/9907/12/iraq.sanctions/} accessed 12 October 2015; Interview by Theresa Reinold with NGO official relating to the IMF case, Washington, DC, 12 June 2012.

[96] Schimmelfennig, *The EU, NATO, and the Integration of Europe*.

[97] Michael N. Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004).

[98] United Nations, Charter (1945), Chapter I, Article 1, available at: {http://www.un.org/en/sections/un-charter/chapter-i/index.html} accessed 23 May 2017.

[99] UN Secretary-General, 'Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse' (9 October 2003), available at: {www.unhcr.org/405ac6614.html} accessed 16 October 2015.

[100] Cora C. True-Frost, 'The Security Council and norm consumption', *NYU Journal of International Law and Politics*, 40:1 (2007), pp. 115–216.

[101] Celeste Wallander, 'Institutional assets and adaptability: NATO after the Cold War', *International Organization*, 54:4 (2000), pp. 705–35; Interviews with senior IMF official and NGO official, Washington, DC, 13 and 14 June 2012.

or on the evaluation of the experiences of peer IOs in the same policy field.[102] In the latter case, IO decision-makers can learn from the policy failures of other IOs and draw lessons for their own policies.

The pathway of anticipatory institution-building renders comprehensible why the EU introduced provisions for the protection of subsistence rights of individuals affected by its own sanctions. The EU itself was not accused of subsistence rights violations, but could observe that the UN was facing harsh criticism for them.[103] Moreover, EU representatives participated in meetings that served to develop proposals for how the civilian population could be spared the negative effects of UN sanctions.[104] As these proposals proved to be relevant for the EU as well, the organisation preventively adopted comparable protection provisions to avoid becoming the target of a harmful campaign similar to that which faced the UN.[105]

The EU case suggests that the activation of this pathway depends on the presence of a reference organisation, which executes the same policy, but commits human rights violations in the process, and therefore comes under heavy criticism to which it responds with the introduction of human rights protection provisions. Such a reference organisation can serve as a role model not only in terms of the safeguards it introduces but also in terms of showing that human rights violations do not go unnoticed.[106] The case also suggests that, for the pathway to be triggered, the IO needs to possess an organisational culture that is conducive to learning and information processing, that is, an organisational culture marked by a flat decision-making process and an open, boundary-spanning institutional structure. Given that, in our case, this pathway only led to limited provisions, no success conditions can be derived from it. It might well be, however, that lesson-drawing not only takes place regarding whether or not to adopt protection provisions but also regarding their quality. Learning from the UN's experience, the EU could conclude that limited provisions were sufficient to reduce external pressure.

Strictly speaking, the case does not provide direct support for the ALM. The EU introduced provisions that were designed to make sure that subsistence rights are not violated when it imposes sanctions, without it having violated such rights or having been criticised for violating them. We argue, however, that the case does not disprove the ALM either, because the EU introduced human rights safeguards in order to avert the dynamics associated with the ALM. The EU observed that the UN, which did violate subsistence rights, was delegitimated as a result, and pre-emptively introduced human rights safeguards to escape the fate of its sister organisation.[107] In this sense, the case does provide indirect support for the ALM.

[102] See Barbara Levitt and James G. March, 'Organizational learning', *Annual Review of Sociology*, 14 (1988), p. 329.

[103] Hadewych Hazelzet, 'Carrots or Sticks: EU and US Reactions to Human Rights Violations (1989–2000)' (PhD thesis, Florence, Italy, 2001), p. 48; Eriksson, *In Search of a Due Process*, p. 11.

[104] Peter Wallensteen, Carina Staibano, and Mikael Eriksson, *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options* (Uppsala: Department of Peace and Conflict Research, Uppsala University, 2003), p. 141.

[105] Mikael Eriksson, *Operational Conflict Prevention and the Use of Targeted Sanctions: Conditions for Effective Implementation by the EU and UN* (New York: Center on International Cooperation, New York University, 2008), p. 11.

[106] See Anthonius W. De Vries and Hadewych Hazelzet, 'The EU as a new actor on the sanctions scene', in Peter Wallensteen and Carina Staibano (eds), *International Sanctions: Between Words and Wars in the Global System* (London: Frank Cass, 2005), p. 95.

[107] See Eriksson, *Operational Conflict Prevention*, p. 11.

Table 2 summarises our findings:

Table 2. Pathways, cases, and hypotheses on conditions.

Pathways	Cases	Trigger Conditions	Success Conditions
Legislative institution-building	• World Bank lending: Subsistence and cultural rights • NATO peacekeeping: Bodily integrity rights and right not to be enslaved	• Independent parliament: Parliament with sufficient autonomy from the executive *and* • Domestic script (facilitative)	• Strong parliament: Parliament in dominant member state *and* • Low sovereignty costs for state whose parliament advocates reforms
Judicial institution-building	• EU sanctions: Due process rights • UN sanctions: Due process rights	• Justiciability: Rights violation in principle actionable before a court	• Strong court: Court with jurisdiction over IO or over implementation in important member states
Like-minded institution-building	• UN peacekeeping: Bodily integrity rights and right not to be subjected to inhuman or degrading treatment • UN peacekeeping: Due process rights • UN sanctions: Subsistence rights • IMF lending: Subsistence rights • NATO peacekeeping: Due process rights	• Visibility: Campaign against rights violation feasible	• Vulnerable identity: Due to strong commitment to human rights *and* • Open organisational culture: Conducive to learning
Anticipatory institution-building	• EU sanctions: Subsistence rights	• Role model: Reference organisation affected *and* • Open organisational culture: Conducive to learning	• (Role model: Reference organisation with comprehensive provisions)

Conclusion and theoretical implications

In this article we have argued that the ALM accounts for the establishment of provisions to ensure that IO policies do not violate human rights. We were able to observe the ALM in nine of our ten case studies on UN and EU sanctions policy, UN and NATO peacekeeping, and World Bank and IMF lending. In all these cases IOs introduced human rights safeguards to regain a legitimacy that had been challenged when human rights violations were exposed. The remaining case study on the EU introducing provisions for the protection of subsistence rights in its sanctions policy is the anomaly, in that the EU introduced provisions without having been criticised for human rights violations. Yet, it does provide indirect support for the ALM, given that the EU learned from the UN's experience and preemptively introduced human rights safeguards to prevent challenges to its legitimacy.

We have, moreover, inductively shown that the ALM can materialise in the form of different pathways, confirming the assumption of equifinality according to which one outcome can be the reached via different routes. Which of the pathways is taken depends on the presence or absence of specific conditions that trigger each pathway. The main input may come from domestic parliaments in IO member states, if these parliaments enjoy sufficient autonomy from the executive (legislative institution-building). National and international courts can drive the introduction of human rights protection provisions, provided the violated right is considered justiciable (judicial institution-building). If the rights violation can be made visible, formally weak actors such as CSOs and middle powers can construct a damaging campaign (like-minded institution-building). If IOs learn from a role model, the fourth pathway (anticipatory institution-building) comes into play, which is at least indirectly linked to the ALM.

Finally, we have inductively identified the conditions under which the pathways are particularly effective. It seems that whether or not the pathway we call legislative institution-building

leads to comprehensive protection provisions depends on the position of the parliament and on the sovereignty costs the provisions entail. The pathway we call judicial institution-building may result in comprehensive provisions if the court involved has jurisdiction over the IO or powerful member states. And the pathway we label like-minded institution-building seems to be comparably effective if the vulnerability of the IO can be exploited and if the IO has the capacity to learn.

Our findings suggest that the concept of the rule of law when applied to IOs has undergone a significant transformation. Traditionally, scholars, if they thought of the rule of law in relation to IOs at all, applied a thin or formal conception of it. Accordingly, legitimate IOs were expected to act in conformity with their legal mandate, generate clear and certain law, and, more recently, introduce legalised dispute settlement bodies to adjudicate conflicts arising in the application of the law.[108] Today, IOs are increasingly expected to abide by a thick, or substantive, conception of the rule of law. IOs are no longer expected only to respect procedural requirements, but also to protect the fundamental rights of individuals affected by their policies, thereby committing to what has been termed humanity's law.[109] This also suggests that what we called a liberal pattern of IO legitimation can complement and partially substitute other legitimation patterns.[110] While much of the debate on the legitimation of IOs centres on IOs' democratic deficit, legitimation through participatory democratic procedures is difficult, because important pre-conditions, such as a transnational demos[111] or equal access to global democratic institutions,[112] are seldom given. Legitimation through human rights protection should be less demanding, as it essentially requires IO decision-makers and member state representatives to commit to basic rule of law standards.

Can we extrapolate from our findings the future of the current trend of IOs accepting their responsibility for the protection of human rights? We believe that there are several indications that the trend will solidify. If we look beyond our case studies, there indeed seems to be a general trend of authority-wielding IOs creating provisions for the protection of human rights. Fifteen of the twenty IOs with the highest name recognition[113] have meanwhile introduced rules for the protection of human rights: the African Union (AU), the Council of Europe, the EU, the Food and Agriculture Organization of the UN (FAO), the International Criminal Court (ICC), the International Labour Organization (ILO), the IMF, 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), the UN Development Programme (UNDP), the UN Educational, Scientific and Cultural Organization (UNESCO), the UN Refugee Agency (UNHCR),

[108] Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, 'Legalized dispute resolution: Interstate and transnational', *International Organization*, 54:3 (2000), pp. 457–88.

[109] Ruti Teitel, *Humanity's Law* (Oxford: Oxford University Press, 2013). For the distinction between thin and thick conceptions of the rule of law, see Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), pp. 91–113.

[110] See also Allen Buchanan and Robert O. Keohane, 'The legitimacy of global governance institutions', *Ethics & International Affairs*, 20:4 (2006), pp. 405–37.

[111] Michael Zürn, 'Global governance and legitimacy problems', *Government & Opposition*, 39:2 (2004), pp. 260–87.

[112] Klaus Dingwerth, 'Global democracy and the democratic minimum: Why a procedural account alone is insufficient', *European Journal of International Relations*, 20:4 (2014), pp. 1124–47.

[113] We measure name recognition by Google Scholar counts (retrieved 9 May 2012). While this is admittedly a rough measure, it indicates the relative relevance of IOs in public debates.

the World Health Organisation (WHO), and the World Bank.[114] Hence, the emergence of human rights safeguards in IOs is not confined to those that are composed of, or dominated by, Western states like those in our sample. Nor is the trend restricted to IOs operating in the areas of security and development or finance, like those in our sample.

Moreover, the conditions that have given rise to the pathways associated with the ALM are likely to hold. States continue to delegate competences to IOs; this tendency may have slowed down to some extent in recent years, but it has not been reversed.[115] We might therefore expect more human rights violations by IOs in the future, and thus more demand for respective protection provisions. Furthermore, the pathway that describes the impact of courts, and which in our case studies had the best success rate of all the pathways we discovered, may become more important in the years to come. Indeed, states not only delegate competences to IOs but also create more and more international courts with private access and compulsory jurisdiction.[116] Besides, domestic courts not only increasingly issue judgements on the domestic implementation of IO policies, but have also begun to concern themselves with disputes between IOs and private litigants, at least with regard to private law issues.[117]

Lastly, there seems to be an increasing number of cases in which IOs introduce human rights safeguards without having violated human rights in the first place. Examples are regional development banks introducing accountability mechanisms[118] and the EU introducing provisions to prevent sexual abuse by its peacekeepers.[119] In these cases IO decision-makers may well have observed that peer IOs (the World Bank, the UN) have come under pressure for violating human rights when executing similar policies. These cases also show that direct pressure on IOs is not necessarily always needed to make IOs introduce human rights safeguards.

At the same time, we cannot fail to mention that the global power transition, and especially the rise of China, may slow down the spread of human rights safeguards among IOs. This has already become evident in the case of the World Bank. The organisation, under pressure from China and other rising powers, is currently watering down its social and environmental safeguards, jeopardising what has been achieved in terms of human rights protection in the past decades.[120] More generally, two of the ALM's pathways, namely the pathways that describe the impact of domestic parliaments and of like-minded actors, may lose some of their leverage if states which oppose strong human

[114] The remaining five IOs that did not introduce human rights protection provisions are 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).

[115] Zürn et al., 'The International Authority Data Project'; Liesbet Hooghe and Gary Marks, 'Delegation and pooling in international organizations', *The Review of International Organizations*, 10:3 (2015), pp. 305–28.

[116] Karen J. Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton, NJ: Princeton University Press, 2014).

[117] Reinisch, *International Organizations before National Courts*; Cedric Ryngaert, 'The immunity of international organizations before domestic courts: Recent trends', *International Organizations Law Review*, 7:1 (2010), pp. 121–48.

[118] Richard E. Bissell and Suresh Nanwani, 'Multilateral development bank accountability mechanisms: Developments and challenges', *Manchester Journal of International Economic Law*, 6:1 (2009), pp. 2–55.

[119] Mária L. Sánchez-Barrueco, 'The promotion and protection of human rights during common security and defence policy operations: In-between a spreading state of mind and an unsolved concern', in Jan Erik Wetzel (ed.), *The EU as a 'Global Player' in Human Rights?* (London: Routledge, 2011), pp. 158–9.

[120] See interview by Monika Heupel with a member state representative, Washington, DC, 20 September 2012.

rights safeguards gain influence in IOs: Western parliaments, especially the US Congress, will lose much of their influence when the US and other Western powers lose their preeminent position in IOs. Likewise, IOs will be less vulnerable to pressure from like-minded campaigns if they face strong counter-pressure from China and other powers with less regard for human rights. Nonetheless, our cases do indicate that challenges by states with differing views are unlikely to succeed in fully dismantling those safeguards in IOs or to halt their evolution completely. In the case of the World Bank, for instance, China is not fighting for the abolition of the Bank's safeguards but rather for their dilution. Likewise, in the case of the UN Security Council's sanctions policy, China eventually gave up its opposition to the creation and subsequent strengthening of an ombudsperson. How the trend of IOs introducing human rights provisions will evolve in the years to come is, therefore, an open question. It is certain, however, that IOs cannot go back to the era in which human rights protection was not expected of them.

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Supplementary material

To view supplementary material for this article (Appendices I and II), please visit: https://doi:10.1017/S0260210517000420

Biographical information

Monika Heupel (MA University of Warwick, PhD University of Bremen) is Junior Professor for International and European Politics at the University of Bamberg. Previously, she was, among others, a Research Associate at the WZB Berlin Social Science Center, a Postdoctoral Fellow at the United Nations University, and a Jean Monnet Fellow at the European University Institute. Her research focuses on the legitimacy of international institutions and on the accountability for human rights violations by international organisations and advanced democracies. She has published articles in, among others, *European Journal of International Relations*, *International Affairs*, *International Studies Quarterly*, and *Security Dialogue*.

Gisela Hirschmann is Assistant Professor for International Relations at Leiden University. Previously, she was Junior Professor for Global Governance and Humanitarian Action at the Ruhr University Bochum from 2016–17, and Max Weber postdoctoral fellow at the European University Institute (EUI) in Florence from 2015–17. She received her PhD (Dr. Phil.) from the Free University Berlin in 2015 and worked as a research fellow at the Berlin Social Science Research Center (WZB) from 2010–15. Her research interests focus on international organisations, institutional change, human rights, and peace operations. She has published articles in *Cooperation & Conflict* and *International Peacekeeping*.

Michael Zürn is Director of the Global Governance unit at the Berlin Social Science Center (WZB) and Professor of International Relations at the Free University of Berlin since 2004. He was founding Dean of the Hertie School of Governance in Berlin (2004–9). He is a member of the Berlin-Brandenburg Academy of Science and of the European Academy of Sciences. He is author of numerous monographs and anthologies, and has published various articles in *International Organization*, *World Politics*, *International Studies Quarterly*, *Global Policy*, *International Theory*, *Journal of Common Market Studies*, *West European Politics*, *Politics*, *Politische Vierteljahresschrift*, *Zeitschrift für Internationale Beziehungen*, and *Leviathan*, among others.